DOCUMENT RESUME

ED 084 984 HE 004 873

AUTHOR	Glenny, Lyman A.; Dalglish, Thomas K.
TITLE	Public Universities, State Agencies, and the Law: Constitutional Autonomy in Decline.
INSTITUTION	California Univ., Berkeley. Center for Research and Development in Higher Education.
SPONS AGENCY	Office of Education (DHEW), Washington, D.C. Cooperative Research Program.
PUB DATE	73
GRANT	OEG-6-10-106
NOTE	194p.
EDRS PRICE	MF-$0.65 HC-$6.58
DESCRIPTORS	College Administration; Educational Planning; *Governance; Government Role; *Higher Education; *Institutional Administration; *State Government; *States Powers; University Administration
IDENTIFIERS	*California; Colorado; Hawaii; Illinois; Maryland; Michigan; Minnesota; Wisconsin

ABSTRACT

This study discusses four states: California, Colorado, Michigan, and Minnesota considered by scholars to have provided their state universities with great autonomy from state government through their constitutions and matched them with four states: Hawaii, Illinois, Maryland, Wisconsin, which have distinguished universities of a similar size whose legal base is purely statutory. The first chapter establishes the legal and historical base of both statutory and constitutional universities. The second chapter is a brief description of the social milieu and the state organizational context in which the university finds itself. The third chapter reveals the study findings obtained from documents and records as well as from interviews and questionnaires. The fourth chapter analyzes the interrelationships of the four principal sets of actors involved in the study--governor's staffs, legislative staffs, state coordinators, and institutional leaders. The last chapter provides tentative conclusions about the operational meaning of constitutional and statutory status and the implications of the findings for institutional autonomy and independence. (Author/MJM)

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Public Universities, State Agencies, and the Law:

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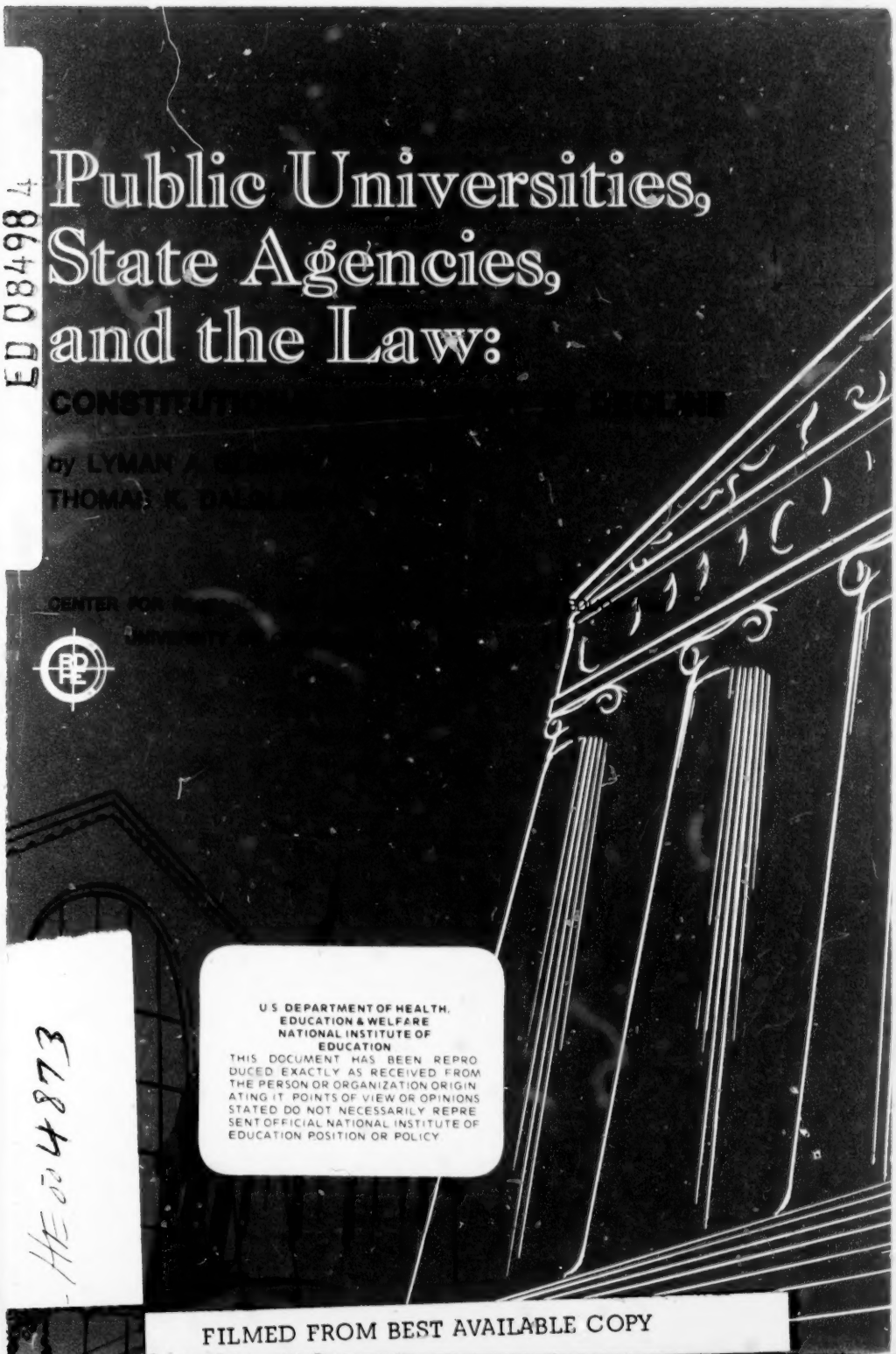

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The research reported herein was supported by Grant No. OE-6-10-106, Project 5-0248-20-72, with the Office of Education, U.S. Department of Health, Education, and Welfare, under the provision of the Cooperative Research Program. Contractors undertaking such projects under Government sponsorship are encouraged to express freely their professional judgment in the conduct of the project. Points of view or opinions stated do not, therefore, necessarily represent official Office of Education position or policy.

ED 084984

Public Universities, State Agencies, and the Law:

CONSTITUTIONAL AUTONOMY IN DECLINE

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CENTER FOR RESEARCH AND DEVELOPMENT
IN HIGHER EDUCATION
UNIVERSITY OF CALIFORNIA, BERKELEY
1973

CONTENTS

INTRODUCTION 1

1 LEGAL BASES 5
- Background 7
- Constitutional Status 14
  - The Granting of Constitutional Status 15
  - The University of Michigan: A First With Constitutional Status 17
  - Judicial Recognition 19
- Limitations on Autonomy 21
  - Legislative Power to Appropriate 21
  - Legislation of Police Power 23
  - Legislative and Executive Powers 23
    - Michigan 23
    - California 24
    - Colorado 25
    - Montana 26
  - Judicial Interpretation 26
- Statutory Status 41
  - Legal Status of Statutory Institutions 42
    - Differences Between Statutory Public Institutions and State Agencies 42
  - Statutory Institutions and Autonomy 44

2 SOCIAL AND ORGANIZATIONAL SETTING 51
Social and Political Trends 52
The New Populism 53
Power of the Governor 54
The Financial Position of the State 56
New Social Priorities 57
State Reorganization 57
State Agencies Controlling the University 61
Agents of the Governor 62
Agents of the Legislature 63
Coordinating Agency 63

3 EFFECTS OF STATE ACTIONS ON THE UNIVERSITY 65
Control of Educational Programs 65
Program Types and Content 65
Academic Management Controls 68
Tuition 68
Appropriation of Tuition 69
Admissions 70
Enrollment Ceilings 70
Faculty Salaries, Tenure, and Productivity 72
Funding, Management, and Budget Controls 73
Constraints on Use of Funds 74
State Tax Funds 74
Federal Overheads 76
Federal and Other Grants 77
State Allotments 77
Transfers of Appropriated Funds 78
Other Revolving Funds 79
Management Controls 80
Personnel Systems 82
Central Purchasing 82
Postaudit and Performance Audit 83
Information Systems 85
Operating Budgets 87
Capital Budgets 91
Ratings of Influence of State Agencies on Higher Education Policy 92

4 STATE POLICY PROCESS AND INSTITUTIONAL RESPONSE 105
The Governor and his Offices 105
Singleness of Purpose 106
Professional Staffs 106
Board Appointments 107
Study Commissions and Audits 108
Allotment of Funds 109
Veto Power 109
Negotiated Agreements 110
The Legislature and its Staffs 111
Advantage over the Governor 111
Staffing 112
Diversity of Issues 112
Legal Attitudes 112
Controls over the University 113
Standing Committees 113
Board of Regents' Terms Reduced 114
Threatening Bills 114
Performance Auditing 114
Program Budgeting 115
Legislators More Threatening than the Governor 116
The Coordinating Board and its Staff 117
Legal Authority 117
Influence Roles 118
Staffing 121
Relationship to the Political Arms 121
Added Power 122
The University Role 123
Use of Autonomy in Responding to State Government . 124
The Source of Autonomy 127
Autonomy and Control of Governing Boards 132
Effects of the Constitutional University on Other State Institutions 134
The Model 134
The Umbrella Effect 135
The Lightening Rod Effect 136
The Leveling Effect 136
Extension of Constitutional States to Other Institutions 137

Effects of Uniform Techniques and Processes 139
Effects of Mass Higher Education and New Institutions 140
State Reorganization of Higher Education 140

5 THE OPERATIONAL MEANING OF CONSTITUTIONAL STATUS 143
General Comparisons 144
The Place of Trust 152

APPENDIX A, SELECTED CASES 155

APPENDIX B, SELECTED PROVISIONS OF STATE CONSTITUTIONS 165

REFERENCES 191

INTRODUCTION

. . . there is a pervasive belief and powerful sentiment that the university is or ought to be independent.[1]

Working relationships between the public university and the government which charters and funds it have long been recognized as ambiguous and undefined. The boundaries shift with the times, fads, economic conditions, and the expectations and aspirations of the public and their governmental leaders. Constitutional provision for the university was early recognized as a means for preventing easy incursion by politicians into the management and control of the institution. Over the years, however, most states have avoided adopting the necessary posture for granting their universities constitutional status, preferring instead to establish universities and intervene in their affairs through statutory provisions.

Issues raised in the relationship between the campus and the state have become more and more serious in the recent past, a fact attested to by the amount of literature produced on the subject in the past 15 years, and especially since 1969. Moreover, the literature is increasingly prescriptive, setting out lists of activities and functions which should differentiate state responsibilities from those protecting the integrity of the institution. If individual scholars remained the sole writers and critics on the subject, such writings might still not be

[1] Waldo (1970, p. 111).

considered of high import; but that is not the case. The Education Commission of the States, the Carnegie Commission on Higher Education, the Association of State Colleges and Universities, the Center for Research and Development in Higher Education at Berkeley, and the federal government have all suggested specific (and at times divergent) activities that should characterize state-collegiate relationships.

The root causes of the controversy have been no more clearly stated than by a distinguished scholar of political science and public administration, Waldo (1970):

> As the university becomes increasingly an instrument of government there will be severe problems arising from lack of congruence between academic norms and ideology and our general governmental-political norms and ideology [p. 111].

The idea for the present study grew out of concerns expressed by a wide spectrum of public officials about the possible effects on the university as states revised their constitution or reorganized their government. The projections ranged from fears that the university could become an arrogant, autonomous agency unresponsive to public policy imperatives, to anxiety that it might become a sychophant of governmental bureaucrats and politicians. And the views about solutions to the problem thus formulated vary with the interests and character of the groups involved. Higher education leaders incline toward protecting the integrity of their institutions by grounding the role, functions, and powers of the university in the constitution. Political leaders opt for an institution made more amenable to societal wishes as expressed through statutory authorizations. State coordinators frequently are undecided about which course of action to support.

To attempt to assess the consequences to universities of different state attitudes and courses of action, this study sought to determine the substantive and procedural ways in which states relate to their constitutionally-based and statutory universities. The authors recognized at the outset that the kind of investigation they were about to undertake would involve conclusions based on subtle distinctions in values and attitudes rather than on quantitative evidence, and that this study would not therefore be based on hard, empirical evidence derived from a characteristic research design. They felt that what was required at this point was description, exploration, and some specula-

tive evaluation that would provide practical guidance for policymakers and lay the groundwork for later, more empirically-based research.

Although this study offers considerably more than the gossip of political agency and university leaders and formulations of the authors' unfounded opinions, it is unlikely that other researchers, two or three years later, would replicate our outcomes in detail. We have no doubt, however, that the major trends found and the judgments of those interviewed would have substantial congruence with those reported in this study. Social science research must of necessity deal with many variables, many of which cannot be foreseen. Changes in place and time create new sets of factors which in their details may well differ from those that were operative when an earlier study was made.

Because the audience to which this small volume is directed are practitioners rather than researchers, we did not include a lengthy review of the literature on organizational theory, decision processes, and coordination, and no attempt was made to relate our findings to such theory. The senior author is already engaged in a more empirical and thorough study of budgeting and state control processes, which encompasses both theory building as well as pragmatic outcomes.

In this study we chose the four states (California, Colorado, Michigan, Minnesota) considered by scholars to have provided their state universities with great autonomy from state government through their constitution, and matched them with four states (Hawaii, Illinois, Maryland, Wisconsin) which have distinguished universities of a similar size whose legal base is purely statutory. We used structured interview schedules; interviewed in depth (with both researchers present) the chief officers of the state agencies and institutions (and/or their immediate associates); utilized a questionnaire on which each person interviewed also rated the relative influence of the state agencies and the institutional governing board in five functional areas; coded the interview results; and programmed, ran, and analyzed the questionnaire results.

A preliminary draft of the manuscript was sent for review of factual matter to a state official and a state university official in each of the eight states. We give our warmest thanks to those persons for aiding us by contributing to our accuracy and sophistication. To maintain the anonymity promised all persons interviewed, we reluctantly also omit the names here of these readers.

The book is divided into five chapters: The first establishes the legal and historical base of both statutory and constitutional univer-

sities; the second is a brief description of the social milieu and the state organizational context in which the university finds itself; the third reveals the study findings obtained from documents and records as well as from interviews and questionnaires; the fourth analyzes the interrelationships of the four principal sets of actors involved in the study—governors' staffs, legislative staffs, state coordinators, and institutional leaders; and the last chapter provides our tentative conclusions about the operational meaning of constitutional and statutory status and the implications of the findings for institutional autonomy and independence.

1

LEGAL BASES

There are three traditions—academic freedom, tenure, institutional autonomy—with roles so instrumental in the development of American colleges and universities, that it is not surprising to find them formalized as doctrine and comprising a central part of the rich legal history of American higher education. Allowing for some disparity between the law and actual practice, it is fair to suspect that a certain amount of mythology is attached to each tradition. But myths and illusions do contribute to reality, and the fact is, each tradition, myth or not, is obviously of some current practical and legal significance. Because each is so interrelated with the others and with the continuing development of higher education, any attempt to isolate one tradition for separate and precise analysis risks oversimplification. Further, each is almost infinitely malleable, enjoys varying interpretations according to time and location, and is constantly in the process of changing in response to actions of its critics and defenders.

The origins of these traditions are uncertain, although certain definite historical roots can be unearthed. Academic freedom, it is often said, can be most directly traced to the late 19th century German higher education traditions of *Lehrfreiheit* (freedom to teach) and *Lernfreiheit* (freedom to learn), which were imported to the United States. Yet the tradition of freedom of thought and toleration is many centuries older (Hofstadter and Metzger, 1955). Tenure is thought to be traceable to the efforts of the American Association of University Professors (AAUP), beginning in 1915 with the "Declara-

tion of Principles," and reinforced periodically with statements issued by that body for the protection and benefit of faculty members. Institutional autonomy, perhaps the most diffuse of the three traditions, finds its antecedents in the social organization of the Middle Ages, in the corporate form, in state constitutions, and in the occasional expedient indulged in by extrainstitutional interests of avoiding complex, unpopular, or unwinnable altercations with institutions and their protectors.

Despite such limitations on a full understanding of academic freedom tenure, and institutional autonomy, it is clear that each of these traditions reflects a common concern with possible intrusions by "outsiders" (e.g., politicians, bureaucrats, business or economic interests, the church) into the internal and essentially academic affairs of colleges and universities and their faculties. These concerns can be taken as real in some degree; they certainly find support in history. The development of these traditions both assumes and serves as a record of conflict over the years between institutions of higher education and the larger society. Within certain limits, there may be said to be two worlds or spheres of interests which often overlap, are in continual conflict with each other, and yet are highly interdependent: one the academic and the other a melange composed of political, religious, governmental, economic, and general societal interests. Although the two spheres are not dichotomous for all purposes, it is helpful to assume dichotomy, or a division of sorts, in any attempt to understand these traditions, an assumption which, as we have said, finds some support in history.

This is a report of a study of what is perhaps the least examined of the three traditions: institutional autonomy. Our intention is to review briefly the historical and legal roots of such autonomy, and particularly the unique device by which American higher education and its supporters have occasionally sought to assure it through conferring "constitutional status" (CS) on a select number of universities. By "constitutional status" (or constitutional autonomy or independence), we refer to the practice of providing in state constitutions for the vesting of exclusive management and control of the institution in the governing board, presumably to the exclusion of state executive and legislative officials. Such a legal status is supposed to contrast sharply with mere "statutory status" (SS), which presumably leaves the institution more open to intrusions by politicians and bureaucrats, a supposition we examine. Finally, because the two are often confused, we discuss briefly the relationship between institutional autonomy and academic freedom.

Major attention is focused, however, on discovering the current meaning and effectiveness of CS as a legal device for securing institutional autonomy. We ask what CS was specifically designed to achieve, how it came about, and whether it is actually successful today in accomplishing its intended purpose. States most frequently mentioned in this section in which universities possess CS are Michigan, Minnesota, California, Colorado, Idaho, Georgia, and Oklahoma. States sometimes mentioned, in which institutions possess a lesser measure of constitutional autonomy, are Alabama, Arizona, and Nevada. No discussion would be complete without considering the situations in Utah, Missouri, and Louisiana, where court decisions or attorney generals' opinions have disconfirmed CS for the major universities.

In brief, the intention was to assess the value of CS to universities by comparing those that have it with those that do not, in the same and in different states. Accepting the existence of some conflict and a great deal of interdependence between universities and the rest of society's institutions and interests, the comparisons were narrowed to the relationships between the institutions and state government, its political officers, and agencies in the executive and legislative branches. That is, relationships to the federal government, the church, powerful economic interests, or broad social forces are not specifically considered. Institutions isolated for examination did not include community colleges, municipal or federal institutions (e.g., City University of New York, West Point), or private colleges and universities. Finally, the several activities selected for study were considered those in which the universities and state government most frequently interact, and investigation of which we thought would illumine the value of constitutional status and its relationship to autonomy: budgeting, planning, construction, academic policymaking, coordination, and others, such as purchasing and the administration of a civil service or nonacademic staff personnel system.

BACKGROUND

The idea of the autonomous university, far from being a contemporary phenomenon or a particularly American one, has its roots in medieval social organization in Europe. Indeed, except for the vesting of governing powers in a lay board of trustees—often credited as an American innovation—the basic governing structure of the university

had already crystallized by the time higher education began to develop in the United States. Seen in this perspective, constitutional status is simply a legal embellishment on an already well-developed theory of organization. As early as the 9th century, with the secularization of education and learning, and the organization of medieval society into guilds, the idea of the autonomous self-governing university found early expression (Brody, 1935).

> "A 'Universitas' (corporate body)," says Maitland in his summary of medieval political and social theory, "is a living organism, and a real person with body and members and a will of its own. Itself can will, itself can act; it is a group-person, and its will is a group-will [p. 1]."

Maitland's language might seem a little quaint by 20th century standards, but the stress on self-initiation and collaborative styles of decisionmaking is by no means unfamiliar in higher education today. The autonomy of the medieval university was not solely a matter of style and a capacity for self-government. It was more organic than that, deriving from the nature of medieval society itself. The corporate form of medieval social organization was broadly determinative of the degree of autonomy the universities enjoyed ("universitas," after all, literally meant "corporation"):

> Corporations in the Middle Ages afforded the necessary social structures for the expression of unified social activity. . . . The power of self-regulation as reposed in the original universities was hardly unusual in the society of which they formed a part. They were a species of the many forms of corporate life which embraced every department of human activity, political, economic, religious, and educational. The recognition of the corporate autonomy of small social groups was the natural expression of a time when there was no single authority to rule all classes and groups of individuals [Brody, 1935, p. 2].

The secular or unitary state was not yet a reality, and sovereignty was more or less evenly distributed among the church, civil power, and the university, each functioning co-authoritatively with respect to each other. According to Hofstadter and Metzger (1955), this decentralization and competition between approximately equal social units enhanced the autonomy of the university:

> The absence of a monolithic structure of power, the existence of a real plurality and diversity of interests within the frameworks of both the ecclesiastical and secular powers, put the universities in a position in which they were not easily overwhelmed. They appealed to king or council against pope, to pope against king or bishop, and to kings and popes alike against truculent town governments [p. 7-8].

In operational terms, therefore, the universities were left along in most matters to govern themselves as they best saw fit.

By the beginning of the 12th century, the universities as autonomous bodies of masters and scholars were often conceived of as "republics" (Brody, 1935, p. 2). But there were other factors as well which protected the autonomy of the universities. Despite the seeming atomization of medieval society, the influence of the church was pervasive. A fundamental solidarity existed. Beliefs were so commonly shared there was no need to formalize independence. Autonomy existed, in other words, but on fundamental matters was seldom exercised. Further, learning was accorded a special status (Hofstadter & Metzger, 1955):

> In the social structure of the Middle Ages the universities were centers of power and prestige, protected and courted, even deferred to, by emperors and popes. They held this position chiefly because great importance was attached to learning, not only as a necessary part of the whole spiritual enterprise, but also for its own sake [p. 5].

Finally, the very poverty of medieval universities left them free to migrate from one place to another when conditions proved unfavorable, a mobility which enhanced their bargaining power in communities unwilling to see them move (Hofstadter & Metzger, 1955, p. 8).

It is significant, however, that the autonomy of the medieval university was not seen in instrumental terms. The conception of the autonomous university really anteceded any perception of the function or utility of that kind of independence. Autonomy was not then seen as a means of insulating the university from outside interference or meddling; it was simply a social fact, a state of being, a given on the basis of which the organizational structure and traditions of the university developed.

The almost natural autonomy of the university in the Middle Ages was not to last, however. The beginning of the rise of the modern state in the 13th century and the ensuing church-state struggles lead eventually to a university which derived its existence and its powers, including its "autonomous" character, from the state. The transition represented a shift from informal or *de facto* forms of social organization, in which the various social units (e.g., church, kings, universities) functioned co-authoritatively as equals, to a formal legal basis of legitimacy. A pluralistic social structure with varied bases of authority was replaced by a more hierarchical one, in which authority was derived from the state. The transition was not sudden—the process in fact took centuries—and the consequences for the university were enormous.

The turning point for the idea of university autonomy was the promulgation of the "fiction" theory of corporations by Pope Innocent IV in 1243. The theory was in effect "a juristic redefinition of ecclesiastical power," designed to offset the threat to the "papal claim for exclusive dominion" posed by those urging the supremacy of the state (Brody, 1935, p. 3). In essence, however, the "fiction" theory was a papal expedient, not a reversal of a trend leading to the completed development of the state. In seeking to avoid subsuming the church to the state, the Innocentean Doctrine of a legal "fiction" implicitly recognized the existence of the state and its authority:

> The central idea in the Innocentean Doctrine may be restated thus: Each Cathedral Chapter, Collegiate church, religious fraternity, university, etc., is a "Universitas," i.e., a free corporation. But its existence, its personality is not something real, not a "natural" fact expressive of a collective body; rather its personality is purely "fictitious." It is merely an artificial notion invented by the sovereign for convenience of legal reasoning. In short, the corporate life of the group is not a social reality, but a legal conception—a "nomen juris" which exists only in contemplation of law [Brody, 1935, p. 3].

What was proposed, in other words, was a kind of dualism. If there was to be a state which threatened to become increasingly secular, there would as well be a self-governing organization which drew only its legal existence from the state. So long as the church and the state were one, papal supremacy was assured. The "fiction" theory was necessary if the church was to retain its power:

> The desire of the church was to absorb within its own structure those inferior forms of corporate life which it had brought into being. This was the reason for the development of a theory of corporations [universities] as "fictitious" persons [Brody, 1935, p. 4].

The Innocentean Doctrine established a pattern of corporate dependence on the state. The relationship was formalized into law: The state in effect chartered or licensed corporations, which could not legally exist without such sanction. It was ironic that a legal "fiction" was so chained to reality. What was the most obvious consequence of this new doctrine? "The juristic implication of this doctrine was the denial of the independent life of free corporations (Brody, 1935, p. 4)."

The disappearance of the autonomous university on the European continent, which had begun with the promulgation of the "fiction" theory of corporations, and the final assumption by the state of nearly exclusive responsibility for education were presaged by two political developments in the 16th century: the Protestant Reformation and the diffusion of Roman law (Brody, p. 6). With the Reformation came the secularization of the state and the transfer to it of the church's former hegemony over the function of education (as well as a good bit of church property). As a consequence, university autonomy and intellectual freedom suffered (Hofstadter and Metzger, 1955, pp. 70-71).

The influence of Roman law was almost as effective in clothing the state with authority over the university. The chief manifestation of this new relationship in the law was the widespread acceptance of the doctrine of the concession theory of corporate life: ". . . that corporate existence is a privilege *conceded* by the state. The concession theory was consistent with the rise of the sovereign state and the inferior legal status of all other institutions within its boundaries. It would not do to have a state within a state or a completely autonomous corporation or university (Brody, 1935, p. 6)."

Another, much more practical reason for the increasing dependence of universities upon the state was economic (Hofstadter & Metzger, 1955):

> As universities became more heavily endowed with college foundations and other properties, and as their intellectual life became increasingly committed to permanent li-

> braries, they became timid and immobile, and their financial dependence provided princes and municipalities with a pretext for unprecedented intervention in their affairs. But it had been, above all, the pluralism of medieval life that provided these powerful corporations with the source of their autonomy; as national states arose, sovereigns, princes, and parliaments took upon themselves the right to meddle in the internal affairs of universities, appointing and discharging professors at will and mocking at the former pride and autonomy of the masters [p. 41].

This movement continued into the 17th, 18th, and 19th centuries. The established theme for the univeristies in France, Germany, and England was increasing state control, with occasional formal concessions toward autonomy, but an autonomy that flowed from largesse, not right.

American contributions to the conception of university autonomy were characteristic. Democratic and individualistic principles encouraged the notion that incorporation was a privilege that any group of individuals acting in association could exercise (Brody, 1935, p. 16). Theories of church organization which were compactual and emphasized the "free consenting action of the covenanted body" infused the colonial church colleges and further strengthened institutional demands for freedom from external influences (Brody, 1935, p. 13). Colleges came to be spoken of as college "communities" (and many remain so characterized today). That the colonial colleges were not really so free from pressures (some ecclesiastical in nature) by founders and governing bodies was not as important as the fact that the state did not intrude, at least not much. Neither church nor state control alone seems a fair characterization of the situation facing the colonial colleges. "It is perhaps less startling but more correct to say that the colleges were governed by the church-state complex (Hofstadter & Metzger, 1955, p. 144)."

In some important respects the legal image of the colonial college was not a great deal removed from the medieval. Noninterference by the state with the activities of the colonial colleges became the rule, was indeed, as Brody put it, "effectively assured through exemptions, privileges, and franchises contained in a charter of incorporation," and this further led to an accumulation of power and prerogatives in the college corporations [p. 18]. Appropriations from the colonial legislatures in no serious way limited the autonomy nor encouraged legislative control of the otherwise private colleges (Brody,

1935, p. 20), although there were occasions when they became beholden to and subject to intervention by legislative interests (Hofstadter & Metzger, 1955, pp. 144-146).

The watershed for the delineation of the legal relationship between American colleges and the state came in 1819 in the Dartmouth College case (*Dartmouth v. Woodward*, 1918), a decision which is as important in the development of private corporations as it is to higher education. The New Hampshire legislature had sought to modify the charter of Dartmouth College and reconstitute the board of trustees into a body more representative of the state as a whole. The United States Supreme Court, however, invalidated the attempt, ruling the original charter in effect a contract between the state of New Hampshire and the college, which the former was without constitutional power to impair. Thus was the private character and political integrity of the early corporations, once chartered, assured. The idea of the autonomous American university derives a large measure of its strength from the Dartmouth College case.

It is safe to say that by the early 19th century the prototypical American college was fairly autonomous, self-governing in the nature of a small academic community, private and most likely denominational, and corporate in legal form. It was also fragile, probably poor, and not very distinguished as an intellectual institution. It was governed by a board of trustees that was "lay" in name only, since all or many of them came from the same church. Its president was likely to be of the same persuasion. The number of such colleges increased so rapidly in those years that something akin to the medieval pluralism and the derivative autonomy established itself. Still, autonomy was always a matter of degree. A church, a founding family, or a community might interfere in college affairs. And the fact that colleges lived on a shoestring scarcely enhanced their autonomous character, for independence was of little value if the institution ceased to exist for lack of funds.

The basic structure of governance of the institutions established in the Middle Ages, and the idea of autonomy—amended by the "fiction" theory of corporate organization and the principles of democratic morality—remained the pattern inherited by American higher education. Thus the inherent tension between the universities and government to which the institutions owe their existence continued as part of the American pattern. The tensions exist at the legal core of the institutions' corporate character: The institutions are "conceded" to exist by the state, and their legal basis of legitimacy is state law.

The fundamental fact was, and continues to be, that colleges and universities are not self-creating; they are created. That they are not self-supporting either, but are dependent upon external sources for financial support only further circumscribes their autonomy.

What is true for private colleges and universities, which are created by corporate charter, is no less true for public institutions. State college and university governance styles were not created out of whole cloth. Rather the already established traditions of governance were adopted almost unquestioningly when the various states, by constitution or statute, created their state institutions. The social importance of higher education, and the disappearance of so many of the small, private colleges established throughout the countryside, lead to the acceptance by the respective states of the responsibility for educating its citizens. Thus, Article III of the Northwest Ordinance enjoined the states (in a decidedly Latin syntax) as follows:

"Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." This language found its way into the education articles of a number of state constitutions, which often refer to education as a primary function of state government, or even more explicitly to the duty of the legislature to establish a state college, university, or agricultural school. The federal constitution, however, is silent on the question of education, although a federal governmental role in the matter is assumed through Congress's power to provide for the general welfare. A state government role is also assured in the United States Constitution through the Tenth Amendment, reserving to the states those powers not granted to Congress nor prohibited to the states.

CONSTITUTIONAL STATUS

(Selected cases relating to the eight states investigated in this study may be found in Appendix A. Selected relevant provisions in state constitutions may be found in Appendix B.)

One of the most significant legal developments in the United States relating to university autonomy was the decision taken by a number of states during the 19th century to promote autonomy by providing in the state constitutions for exclusive governance of the university by the institution's governing body. The idea was to remove

questions of management, control, and supervision of the universities from the reach of politicians in state legislatures and governors' offices. The universities were to be a fourth branch of government, functioning co-authoritatively with the legislature, the judiciary, and the executive. The states which have attempted and to some extent succeeded in conferring constitutional status on one or more of their universities are Michigan, Minnesota, California, Colorado, Idaho, Georgia, and Oklahoma. (Montana has recently accorded its university system a measure of constitutional autonomy, as yet unlitigated, by a new constitution scheduled to take effect July 1, 1973.) Less successful in their attempts because the seeming CS is heavily qualified by court decisions, attorney generals' opinions, or long-established practice, are Alabama, Arizona, and Nevada. States in which, judging from the language of the constitution alone, one or more of the universities might have been deemed to possess CS, but do not as a result of decidedly adverse court decisions, attorney generals' opinions, or long-established practice, include Louisiana, Missouri, and Utah.

Most universities with CS are public corporations as well, a fact which can become important in determining the precise degree of legal autonomy a university possesses. Each state is unique in other respects: No two constitutions are exactly the same or are interpreted in the same way. And this applies to provisions relating not just to the universities, but to the governor, auditor, legislature, and other offices and officials in state government whose powers and duties are the subject of constitutional consideration and have an influence over higher educational institutions. Nor are court decisions, attorney generals' opinions, and administrative practice uniform among the states whose universities possess constitutional status. Interpretations also vary with the nature of the problem: There are differences, for example, between issues relating to mechanics' liens, student discipline, and loyalty oaths. The result is that no two universities with CS can be said to be equally autonomous or equally free to make decisions without interference. Once past a level of generality, an analysis of CS defies rigid categorization.

The Granting of Constitutional Status

The original decisions to grant CS were for the most part made in the decidedly political context of constitutional conventions. Besides simply providing for the governance of the university, other

issues relating to education also had to be resolved in these conventions. What should be done with lands set aside by Congress in state-enabling acts for the support of the common schools and the university? Who was to manage the lands, sell timber or grazing rights, earn the interest from proceeds of the sales? Where was the university to be located (an important issue in Colorado, Idaho, Minnesota)? How should the governing body be selected: by gubernatorial appointment, as in California, or by election, as in Michigan and Colorado? And if elected, should the election be by the people, as in Michigan and Colorado, or by the legislature, as in Minnesota? How extensive were to be the powers given or the limitations set upon the governor, the legislature, and other state officers and agencies with respect to the university? In addition to resolving such basic issues of governance, there was also some measure of local pride in creating and maintaining a state university—a motivation often fully reflected in the constitutional debates. Still, the fundamental issue was one of control, and the question usually was whether the elected representatives of the people in the legislature and governor's office should have the largest share of the power to make policy for the university, or whether the university should be removed from partisan and political battlefields by being given CS.

The dangers of legislative involvement were perceived as early as 1819 by Daniel Webster, who argued on behalf of the autonomy of Dartmouth College and pointed out the consequences of intrusion by the New Hampshire legislature into that college's affairs (quoted in Hicks, 1963):

> It will be a dangerous, a most dangerous experiment to hold these institutions subject to the rise and fall of political parties, and the fluctuations of political opinions. If the franchise may be, at any time, taken away or impaired, the property also may be taken away, or its use perverted. Benefactors will have no certainty of effecting the object of their bounty; and learned men will be deterred from devoting themselves to the services of such institutions. . . . Colleges and halls will be deserted by all better spirits, and become a theatre for the contentions of politics [p. 6].

The University of Michigan: A First with Constitutional Status

In 1850, the University of Michigan became the first institution to be accorded CS, a decision which followed some 30 years of struggle between the university trustees, the governor, and the legislature for control of the institution. Not only had the legislature on occasion ventured into the selection and appointment of faculty, the establishment of departments and curricula, and the sale of university lands at prices considered scandalously low, but the governor had turned his hand to reorganizing the university faculty and staff and had even fired the university's first-appointed faculty member the day he showed up for work (Cudlip, 1969, pp. 6-13; Hicks, 1963, pp. 8-24; Schlafmann, 1971, pp. 17-23.)

Clearly unstable in its early years, the University of Michigan was far from the distinguished institution so many in Michigan wanted it to be. There were some who readily and publicly attributed the failure of the university in those early years to its utter dependency on the changing political climate of the legislature (Cudlip, 1969, p. 6). In 1840 a select committee of the Michigan legislature was created to look into the situation, and it reported back in the same year with what was to become the classic and widely heralded rationale for a board of regents with CS:

> When legislatures have legislated directly for colleges, their measures have been as fluctuating as the changing materials of which the legislatures were composed. When they have acted through a board of trustees, under the show of giving a representation to all, they have appointed men of such dissimilar and discordant characters and views that they never could act in concert; so that, whilst supposed to act for and represent everybody, they, in fact, have not and could not act for anybody.
>
> Again, legislatures, wishing to retain all the power of the State in their own hands, as if they alone were competent or disposed to act for the general good, have not been willing to appoint trustees for a length of time sufficient for them to become acquainted with their duties, to become interested in the cause which they were appointed to watch over, and feel the deep responsibility of the trust committed to them. A new board of trustees, like a legislature of new members, not knowing well what to do,

> generally begins by undoing and disorganizing all that has been done before . . . Whilst State institutions have been, through the jealousy of State legislatures, . . . sacrificed to the impatience and petulance of a heterogeneous and changeable board of trustees, whose term of office is so short that they have not time to discover their mistakes, retrace their steps, and correct their errors, it is not surprising that State universities have hitherto, almost without exception, failed to accomplish, in proportion to their means, the amount of good that was expected from them, and much less than colleges in their neighborhood, patronized by the religious public, watched over by a board of trustees of similar qualifications for duty, and holding the office permanently, that they may profit by experience.
>
> The argument by which legislatures have hitherto convinced themselves that it was their duty to legislate universities to death is this: "It is a State institution, and we are the direct representatives of the people, and therefore it is expected of us; it is our right. The people have an interest in this thing, and we must attend to it." As if, because a university belongs to the people, that were reason why it should be dosed to death for fear it would be sick, if left to be nursed, like other institutions, by its immediate guardians. Thus has State after State, in this American Union, endowed universities, and then, by repeated contradictory and over legislation, torn them to pieces with the same facility as they do the statute book, and for the same reason, because they have the right [Cudlip, 1969, pp. 7-8; Hicks, 1963, pp. 18-20].

In 1850, ten years after the legislative report was issued, a new Michigan constitution conferred CS on the University of Michigan. The power of the legislature over the university was reduced, the institution was declared a body corporate, and its governing board of regents was to be elected and vested with the "general supervision" of the university. The Michigan Constitution has been amended three times since 1850 (1908, 1959, 1963) in efforts to expand and consolidate the legal position of the University of Michigan and to extend similar status to other senior institutions in the state, all of which today possess CS. The governing board of each state university today is charged under the 1963 constitution with the "general supervision" of the institution and "the control and direction of all expenditures from the institution's funds."

Other states attempted to follow Michigan's lead: Minnesota, California, Utah, Nevada, Missouri, Colorado, Idaho, Oklahoma, Georgia, and most recently Montana. Alabama, Arizona, and Louisiana could be included, although they have seldom been so considered. Not all these states, of course, were as successful as Michigan in having the status they sought to confer by the constitution upon their universities recognized by the courts and commentators as autonomous. For some (Louisiana, Missouri, Utah) CS was all but eliminated as a result of adverse court decisions (and long-established practice) which stripped the pertinent constitutional provisions of any potential they might have had for conferring autonomy on the respective universities. For others (Arizona, Nevada) the CS was considerably qualified by court decisions. For yet others (Georgia, Oklahoma) the constitutional language itself opened up possibilities for qualified interpretations. With respect to Montana, a new state constitution scheduled to go into effect July 1, 1973, appears to confer a considerable degree of autonomy on the public institutions of higher education in the state, but the new provision in the constitution has not yet been interpreted by the courts.

Once the practice of endowing a university with CS had been established in Michigan and those states which followed Michigan's lead, it remained for the courts to develop interpretations of the meaning of this new status for the universities. Once again Michigan, with by far the greatest amount of litigation on the subject of CS, set the pace.

Judicial Recognition

Judicial recognition given in the past 120 years to the CS of the University of Michigan and other similarly endowed universities in the state is as unremittingly favorable to the autonomy of the institutions as could reasonably be expected. Whether the court decisions have made much difference to successive legislatures is another matter. Since the same issues tend to be litigated, with some variations to be sure—legislative imaginations, particularly when higher education is involved, are not unfertile—one might infer that the legislature is not inclined to take "no" for an answer. The first real struggle between the university and the legislature concerned a series of repeated attempts by the legislature between 1855 and 1896 to compel the university to establish a school, professorship, or department of home-

opathy (Cudlip, 1969, pp. 23-52; Hicks, 1963, pp. 37-54.) Five times the legislature acted in one way or another to accomplish its objective (by direct legislative act or by conditioned appropriation), and each time the result favored the university's refusal to do so. Significantly, the whole issue arose only concurrently with the first direct legislative appropriation to the university (Hicks, pp. 37-39).

Not until the final homeopathic case in 1895 was the landmark decision of the Michigan Supreme Court on the subject of the constitutional status of the university finally handed down. In 1875 the university, acquiescing to legislative demands, had created a School of Homeopathy in Ann Arbor for which funds had been regularly appropriated. Twenty years later, the legislature commanded the university to move the school from Ann Arbor to Detroit, and the university refused (Hicks, 1963, p. 60). A taxpayer's suit was brought to compel the university to comply with the legislative command, and a unanimous court rang down the curtain on any continuing doubts about the court's interpretation of the legislature's power to control or interfere with the university (*Sterling* v. *Regents of the University of Michigan*, 1896). The court said, in part (*Sterling*, 1896):

> The board of regents and the legislature derive their power from the same supreme authority, namely, the Constitution. Insofar as the powers of each are defined by that instrument, limitations are imposed, and a direct power conferred upon one necessarily excludes its existence in the other.... They are separate and distinct constitutional bodies, with the powers of the regents defined. By no rule of construction can it be held that either can encroach upon or exercise the powers conferred upon the other [p. 257].

Fifteen years later, in a case involving the auditor general's refusal to pay over funds for the normal traveling expenses of the university's president, the Michigan Supreme Court ordered the expenses paid and characterized the Board of Regents as "the highest form of juristic person known to the law, a constitutional corporation, which, within the scope of its functions, is co-ordinate with and equal to that (sic) of the legislature (Board of Regents of University of Michigan v. Auditor General, 1911, p. 1040."

These two Michigan cases, both widely cited and quoted in leading decisions in other states, have been enormously influential in the development of judicial interpretations of the meaning of CS. The

legal status of such institutions in nearly all the other states was crystallized by at least one court decision in each state. The issues that inspired litigation varied widely: a homeopathy chair or department, traveling expenses for a president, the location of a medical school, smallpox vaccinations for entering students, payment for an actuarial survey of the insurance needs of faculty and employees, loyalty oaths, legislative attempts to create an advisory board of regents or to alter the composition of the board, executive attempts through the auditor's office to review the propriety and wisdom of certain institutional expenditures, legislative attempts to create a new engineering college and degree at the state university. The listing is far from complete. Indeed, it is doubtful that any complete record could ever be compiled. Further, the universities were not always successful in defeating what they felt were intrusions.

LIMITATIONS ON AUTONOMY

Legislative Power to Appropriate

One legislative device for control frequently resorted to is the attachment of conditions to appropriations bills. The idea behind a conditioned appropriation is to use the legislature's power of the purse to influence policy in the institution. One study of legislative enactments which purported to affect the universities in Michigan with CS concluded that of the 328 such acts that referred to one or all of the institutions from 1851 to 1971, two-thirds were appropriations acts which attached policymaking conditions to the funds appropriated, and all that were reviewed for their constitutionality were found to be unconstitutional by the Michigan Supreme Court (Schlafmann, 1971, pp. 125-33).

The boundary line between permissible and unconstitutional involvements of legislative and executive officials in the affairs of a university with CS is indistinct, certainly varying from state to state. There are some general limits to the autonomy of such universities, as Brody (1935) has pointed out:

> The constitutional status of the university does not raise it above the legislative power when the latter acts as the state organ of public authority [pp. 183-2].

The legislature's power to appropriate, then, is one major source of limitation on the autonomy of universities with constitutional status, provided areas considered to be within the prerogatives of the governing board are not ventured into—areas such as academic policy, admissions and graduation standards and requirements, tenure, student discipline, new programs, and the like. Borderline areas which allow for dispute over which are legislative and which institutional prerogatives are those involving large expenditures of money (e.g., a new law school, a new medical school, new campuses). It is always a question of fact (not one of law) in each such case where the line is to be drawn, and much depends on the traditions in each state.

The proper limits of legislative power for conditioning appropriations to a university with constitutional status has been well-described by one commentator (Wooden, (1957)):

> While it must be recognized that the legislature's power to make appropriations to a constitutional university does not include and is separate from the power to control the affairs of such a university, the legislature can within reason attach conditions to its university appropriations. If a constitutional university accepts such conditioned funds, it is then bound by the conditions. There are not many decisions in this area, however, so the line between conditions the legislature can validly attach and those it cannot has not been drawn in a distinct fashion. Conditions which require the universtiy to follow prescribed business and accounting procedures have generally been found to be valid. The courts have also sustained conditions which require, on penalty of losing part of the appropriation, annual reports to the governor, and fair and equitable distribution of an appropriation among the departments of the university or maintenance of university departments. It has also been held that the legislature can properly make nonteaching employees subject to the state's workmen's compensation law, and can require loyalty oaths by the teachers. On the other side of the line, a condition that the university move a certain department of the school has been held to be invalidly attached, and an attempt to limit the amount of the funds that can be spent for a given department is likewise an invalid condition. It is clear that limits should be placed on the use of the conditioned appropriation, for without such

limits the legislature could use the conditioned appropriation to strip the university of its constitutional authority [pp. 729-39].

Legislation of Police Power

Another limitation on CS is police-power legislation. It is generally acknowledged that in matters relating to the public health, safety, and welfare of the people of the state the general police powers of the state executive and legislative branches prevail over the constitutional autonomy of the university. Thus, in a leading California case, although a regents' rule relating to smallpox vaccinations for entrants to the university was held to prevail over a state statute on the same subject, the court conceded that a properly drafted state statute which constituted a valid exercise of state police power (the one in question in this case was not) would take precedence over the regents' rule (Brody, 1935, pp. 193-94; Chambers & Elliot, 1936, pp. 140-41; Cudlip, 1969, p. 113; *Williams v. Wheeler,* 1913).

Other examples of areas in which properly drafted and implemented laws as exercises of general state police power would prevail over university autonomy are those relating to fire and safety standards, university police, campus disorders, minimum wage and fair labor standards, and collective bargaining. On matters such as these the university campus cannot be an "extraterritorial state within a state (Cudlip, 1969, p. 113)."

Legislative and Executive Powers

A third and often ignored major source of limitation on CS are constitutional provisions relating to legislative and executive powers which when exercised serve to limit the constitutional powers of the institutional governing body. Constitutional provisions relating to the university cannot be read alone. Many of these other provisions in the various state constitutions were inserted in recent years (1900 through the 1960s) and reflect a growing concern over public accountability for the expenditure of state tax dollars. The situations in Michigan, California, Colorado, and Montana are illustrative.

Michigan

Thus, several recent provisions in the 1963 Michigan constitution reflect a slight shift towards demanding greater public account-

ability on the part of the universities. The state board of education was charged with "planning and coordinating" the educational policies of all the institutions now possessed of constitutional status—and in doing so was instructed by the constitution not to impinge on the autonomy of the institutions—an ambiguous provision that at least has given the coordinating board (the state board of education) some claim to powers in respect to public higher education. An annual accounting of all income and expenditures by the universities was to be given to the legislature. The governor was given the power to reduce institutional expenditures authorized by appropriations in the event actual state revenues fell short of revenue estimates on which appropriations were made [Michigan Constitution, 1963, Article 5 §20]. Formal sessions of the governing boards of the institutions were required to be open to the public. Finally, for the first time the state auditor was given the the constitutional power to audit the books of the universities possessed of constitutional status [Michigan Constitution, 1963, Article 4 §53].

California

In California, too, much the same sort of development has taken place. The historical antecedents for imposing some limits on the powers of the regents of the University of California and for creating a role for the legislature in university affairs can be found in the 1878 constitutional convention debates over the provision relating to the university. The one limitation agreed upon in the convention was that the University of California "should be subject only to legislative action in the matter of appropriations (Hicks, 1963, p. 108)." Hence, there appears the provision in Article 9, Section 9, of the Constitution subjecting the university to legislative controls only "as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds." The university is often characterized by the courts as a state institution, a governmental agency, a constitutional department of the state, a public trust, and so on—is probably subject to the state budget act passed by the legislature, and subject to the regulations and requirements with respect to the filing of claims with the state controller, all by virtue of Article 13, Section 20, of the State Constitution (as amended November 1966):

> *Notwithstanding any limitations or restrictions in this constitution contained,* every state office, department,

> institution, board, commission, bureau, or other agency of the State, whether created by initiative law or otherwise, shall be subject to the regulations and requirements with respect to the filing of claims with the State Controller and the submission, approval and enforcement of budgets prescribed by law [emphasis supplied].

No court has ruled yet on the applicability of this provision to the university, but provisions in the general appropriations acts appropriating funds to the university regularly contain phraseology exempting the university from a portion of the state budget act—language which assumes coverage but for the exempting language.

The governor, and through him the State Department of Finance, has the power under the Constitution (Article 4, Section 12b) to "require a state agency, officer, or employee to furnish him whatever information he deems necessary to prepare the budget," a provision which may very well be applicable to the university, although no court has held it so, neither the university nor the governor apparently being willing to test the other's power in connection with the provision. While governors have veto power over legislation generally, universities with constitutional status are not normally affected, because neither the legislature nor the governor can usually affect such an institution with most state legislation, except in matters pertaining to the general police powers of the state. In California, however, the governor has the power to reduce or eliminate one or more items of appropriation while approving other portions of the appropriations bill (California Constitution, Article 4, Section 10, as amended November 8, 1966), a power which quite clearly can (and does) occasionally affect the university.

Colorado

Colorado also has resorted to provisions of the constitution other than those relating to the university to delimit the constitutional autonomy of the regents of the university in certain matters. (See Memorandum No. 2 to Committee on Organization of State Government from Legislative Council Staff regarding Higher Education dated July 5, 1968.) For example, the 72 sections of land made available in the Congressional Enabling Act for the use of the university is controlled and managed by a state board of land commissioners appointed by the Governor (Colorado Constitution, Article 9 §9 and 10). The state auditor, by virtue of a 1964 amendment to Colorado Constitu-

tion Article 5 §49 is empowered to conduct postaudits of all state agencies and bodies . . . including educational institutions notwithstanding the provisions of Section 14 of Article IX of this constitution . . ." (vesting exclusive control of appropriated funds in the regents).

Montana

Even Montana, in its new constitution, vests in the board of regents of the Montana university system "full power, responsibility, and authority to supervise, coordinate, manage and control" the university system (Article IX, Section 9), yet also provides in the same section that "funds and appropriations" under the regents' control "are subject to the same audit provisions as are all other state funds."

Judicial Interpretation

A fourth source of limitations on the prerogatives of institutions presumably possessed of constitutional status is judicial interpretation of the particular language itself used in the constitutional provision relating to the institution. For example, several state constitutions, after conferring the power to govern, administer, supervise or manage the affairs (the language varies) of the institution, qualify such language with the phrase, "according to such regulations as may be required by law" or "as required by law." Thus, Idaho conditions with the phrase, "such regulations as may be required by law (Idaho Constitution, Article 9, Section 10)." Other states do somewhat the same thing: The University of Nevada is "controlled" by a board of regents "whose duties shall be prescribed by law (Nevada Constitution, Article 11, Section 4)," but which is empowered "to control and manage the affairs of the university and the funds of the same under such regulations as may be provided by law"; the board of regents of Oklahoma State University is vested first with the duties, powers, and authority possessed by the predecessor board of regents operating under territorial statute, and second with such additional duties as may be provided for by the legislature ("... shall discharge such other duties . . . as now . . . [are], or may hereafter be, provided by law (Oklahoma Constitution, Article 6, Section 31)"; and in Georgia the board of regents of the university system is vested with the "government, control, and management" of the university system and also with "the powers and

duties as provided by law existing at the time of the adoption of this amendment, together with such further powers and duties as may be hereafter provided by law (Georgia Constitution, 1943, 2-7102, Par. II)."

In each example cited above, and they are merely representative, the constitution appears to vest considerable power in the institutional governing board–from which derives a measure of CS for the institution–and then makes such vested powers conditional on the periodic enactment of laws by the legislature. To subject the governing board to the vagaries of legislative lawmaking would seem to negate CS, and the institution would appear to have merely SS.

Courts in the different states have arrived at varying interpretations of such phrases as "constitutional status" and "statutory status" and it is difficult to be too specific without resorting to specific cases and unique factual situations. Generally, the courts have been reluctant to permit "legislative regulation" in academic or educational policy areas, confining the operation of such legislative powers to matters relating to fiscal and monetary activities and purely procedural or administrative concerns. Legal authority in states (Idaho, Nevada, Oklahoma, Georgia, Colorado) where some measure of "legislative regulation" seems to be permitted by the constitution supports this claim.

While judicial interpretation has been responsible for an evolving set of limitations on the CS of universities in states where some measure of legislative regulation seems to be permitted, in a few states judicial action has been absolutely crucial to the very existence of CS for universities. This is the case in Minnesota, Utah, and Louisiana.

The provision in the Minnesota Constitution (Article 8, Section 3) which has been interpreted as conferring CS on the University of Minnesota reads as follows:

> The location of the University of Minnesota as established by existing law, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated unto the said University; and all lands which may be granted hereafter by Congress, or other donations for said University purposes, shall vest in the institution referred to in this section.

The provision in the Utah Constitution (Article 10, Section 4) relating to the institutions in Utah reads as follows:

> The location and establishment by existing laws of the University of Utah, and the Agricultural College (not Utah State University) are hereby confirmed, and all the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto said University and Agricultural College respectively.

The two provisions are nearly identical, yet the University of Minnesota has been held to possess CS and the two universities in Utah have not (*State ex vel University of Minnesota v. Chase,* 1928 Hicks, 1963, pp. 154-176; 249-281; Wooden, 1957; *Spence v. Utah State Agricultural College,* 1950; *University of Utah v. Board of Examiners of State of Utah,* 1956).

The *Chase* decision in Minnesota in 1928 followed 70 years of continuous heavy legislative involvement in university affairs. It was a case belatedly recognizing the [illegible] of the institution. In 1925, at the behest of Governor Christianson, the Minnesota Legislature created a Commission of Administration and Finance which was to supervise all financial affairs of state agencies, including those of the university (Hicks, 1963, pp. 154-55; Minnesota Laws [1925], c.426; Brody, 1935, pp. 202-205). An agricultural depression had hit the state, state revenues were scarce, and economies in state government were felt to be needed. As in the early 1860s, when the legislature once before had moved to head off the financial impoverishment of the university, and again at the turn of the century when economies in state government were of sufficient importance to the governor and the legislature to result in a Board of Control with jurisdiction over the university, so in 1925 the financial squeeze on state government resulted again in controls by the governor and legislature being asserted against the university, this time through the commission. The commission was empowered to review the estimated quarterly financial needs of every agency, including those of the university: No expenditures could be approved by the state auditor unless the object of the expenditure was approved by the commission; all contracts and obligations of the university and other agencies were to be supervised and controlled by the commission; and all rules, policies, and orders of the commission were subject to gubernatorial review (Hicks, 1963, p. 155; Minnesota Laws [1925], c.426; Brody, 1935, pp. 202-203).

After a review of the legal history of the university, the president of the university and the dean of the Law School became convinced that the 1925 Act, so far as it applied to the university, was an unlawful impingement on the as yet unrecognized CS of the university. With the regents' concurrence, however, they also concluded that in view of the economic situation facing the state, it was not then politic to seek legislative amendment of the law. Rather, it was thought to be the best strategy to comply for the time being, and wait until the issue presented itself in the clearest form, then to litigate once and for all the autonomous character of the university (Hicks, 1963, pp. 156-57).

The issue finally chosen by the university as a battleground concerned the disapproval by the commission and the state auditor of a request for the expenditure of a sum needed for an actuarial survey of the insurance needs of the faculty and employees of the university.

In 1928 the Minnesota Supreme Court issued the landmark decision establishing the University of Minnesota as an institution with clear constitutional status (*State ex rel University of Minnesota v. Chase*, 1928). The Court declared unconstitutional that part of the 1925 law purporting to give the Commission of Administration and Finance power to supervise the university. Noting that it had taken 70 years since the adoption of the Constitution in 1858 for the first issue of power between the regents and the legislature to reach litigation, the Minnesota Supreme Court was inclined to be understanding of the regents' reluctance to challenge the legislature, and expressed the hope that judicial demarcation of the jurisdictional boundaries between the two constitutional bodies would obviate any future necessity for the Court to intervene (*Chase*, 1928).

> Once they recognize even the general location of their limits, Legislature and executive are alike careful not to come even near an encroachment on each other's domain. And if one takes place, it is likely to be suffered in silence in order to avoid open conflict. Especially is that so when the usurper is the legislative power. The executive is ordinarily too dependent upon the Legislature for appropriations, and too desirous of generosity therein, to risk the disfavor of the money distributors by resisting their invasions of executive domain. In Consequence, the executive policy of nonresistence may be patient and endure much—as will appear from the legislative history of the University . . . [p. 955].

The university's patience and endurance was thus legitimized as a strategy for survival in the court's judgment. The court further concluded that 70 years of legislative transgressions could not invalidate an unconstitutional exercise of authority (*Chase,* 1928).

> 'When the meaning and scope of a constitutional provision are clear it cannot be overthrown by legislative action, although several times repeated and never before challenged.' The delay in presenting the question is no excuse for not giving it full consideration and determining it in accordance with the true meaning of the Constitution. . . . To us, the language 8 §4 [now Article 8 §4], of the Constitution of Minnesota admits of no doubt. So, deferentially as we regard the long-entertained legislative assumption of power to direct University management, we are constrained to hold that it has no basis in the Constitution and is so clearly in violation thereof that no amount of use can validate it. The whole power to govern the University, we repeat, was put in the regents by the people. So no part of it can be put elsewhere but by the people themselves . . . [R]ecognizing the mandate of the Constitution, we must give it effect. . . . The Constitution of the state has declared, in effect, that the management of the University shall be, until the people themselves say otherwise, in a relatively small, slowly changing board, chosen for their special fitness for and interest in the work. . . . [T]he purpose of the Constitution remains clear. It was to put the management of the greatest state educational institution beyond the dangers of vacillating policy, ill-informed or careless meddling and partisan ambition that would be possible in the case of management by either Legislature or executive, chose at frequent intervals and for functions and because of qualities and activities vastly different from those which qualify for the management of an institution of higher education. *Sterling v. Regents of the University of Michigan,* 110 Mich. 369, 68 N.W. 253 (1911). . . . Constitutional limitations are not to be ignored because no harm has come from past infractions or because a proposed violation has a commendable purpose [p. 957].

But the hopes of the Minnesota court that it might by its 1928 *Chase* decision have laid to rest for a time the disputes between state legislative and executive officials and the regents of the univer-

sity were unrealistic. The governor's immediate response was to cut the university's proposed appropriation in his next budget message and then, when the senate restored most of his cuts, to veto the appropriations bill in its entirety (Hicks, 1963, pp. 172-3). The eventual outcome for the university was a substantially compromised appropriation—and for the governor and the state auditor, both of whom stood for reelection, a defeat at the polls, a defeat which may have been directly attributable to their struggles with the university (Hicks, 1963, p. 174).

The decisions in Utah, starting with a constitutional provision nearly identical to Minnesota's and a similar factual situation, reached opposite conclusions. The institutions in both the pertinent constitutional provisions had incorporated the pre-existing statutes as part of the organic law of the state. Why were the results different in the two states?

The first Utah case involved two issues: the legality of legislative changes in the composition of the board of trustees of the State Agricultural College (Utah State University) since the adoption of the Utah Constitution in 1895, and the question of whether bonds issued by the institution constitute a debt against the state (*Spence v. Utah State Agricultural College*, 1950; Hicks, 1963, pp. 254-66). Crucial to both issues was the fact that since the college had not been a corporation before the constitution was adopted in 1895, a corporation was not perpetuated and, therefore, said the Utah Supreme Court, the college was an arm of the state, a creature of the legislature, which retained the power it had prior to the adoption of the Constitution to alter the composition of the board of trustees and pass other laws affecting the institution without running afoul of the constitution. It was precisely the absence of corporate status at the time the constitution was adopted or the failure to vest the institution with such status by the constitution itself that distinguishes the situation in Utah from Minnesota (and Colorado, Michigan, and California). Interestingly, the legislature finally conferred corporate status on the institution in 1929 (Hicks, 1963, p. 259).

Two other considerations were important in the *Spence* case, however: The first was the fact that for some 50 years the College had acquiesced in legislative mandates without challenging them. The second was that there was no language in the constitution itself prohibiting the legislature from involving itself in college affairs (*Spence*, 1950, p. 22). Accordingly, the legislative changes in the composition of the board of trustees were found to be lawful. Significantly, the

University of Utah had entered the *Spence* case as *amicus curia*, seeking by doing so a decision as to its own status under the constitution, but the court shied away from the sweeping ruling favoring CS sought by the university, and it refused to rule on several other issues raised by the university (which included all constitutional questions that had ever arisen in connection with legislative attempts to control and supervise the fiscal policies, operations, and functions of the university).

The landmark decision for the University of Utah came in 1956. Governor J. Bracken Lee had sought, through the state auditor's office, to examine not just the legality but the wisdom of certain university expenditures (Hicks, 1963, p. 266). Feeling somewhat beleagured, the university, asserting CS as a constitutional corporation, brought a declaratory judgment action seeking clarification, once and for all, of its legal status. Believing it had chosen favorable ground for its battle, the university went for broke. Named as defendants were the Board of Examiners, the governor, the Commission of Finance, the attorney general, the state auditor, and the state treasurer. While the trial court found in the university's favor, the Utah Supreme Court held that the university was not a constitutional corporation independent of legislative control (*University of Utah v. Board of Examiners*, 1956). It may be that the university sought too much and alarmed the court in the process, for the court took the view that a constitutional corporation was more like an "independent province" than a fourth branch of the government. As one commentator has skillfully summarized the court's reasoning (Wooden, 1957):

> The court reasoned that if it granted the university status as a constitutional corporation the school would not be subject to the laws enacted by the legislature, any conditions attached to appropriations would be void, and the university would have a 'blank check' to spend all the university funds 'without any semblance of supervision or control'. The possibility that the university might even have the power to destroy the solvency of the state was also interjected by the court. The principal case concluded [referring to *Board of Examiners, supra.*] that since such a result would subvert many other provisions of the constitution, it could not have been intended that the plaintiff university should be a constitutional corporation free from legislative control [p. 729].

The court's indispositions to grant CS for the University of Utah was strengthened by comparisons it drew between Utah's constitution and those in Minnesota and Idaho (*Board of Examiners,* 1956, pp. 355-59). In the first place, control of lands given by Congress to Minnesota for university purposes were according to the Minnesota Constitution, under the control of the regents of the University of Minnesota. No similar powers were given the University of Utah regents under the Utah Constitution. More importantly, the University of Utah, though constituted a public corporation in the 1892 Territorial Legislation which later was perpetuated by the 1895 Constitution, was also by the same Territorial Act expressly made "subject to the laws of Utah, from time to time enacted, relating to its purposes and government . . . " and this reservation clause of sorts, conditioning the university's rights, was also held to be perpetuated by the subsequent Constitution (*Board of Examiners,* 1956, pp. 354-55). Again, equivalent language was not to be found in either the Minnesota Constitution or the pre-existing Territorial Legislation in that state establishing the University of Minnesota (*Board of Examiners,* 1956, p. 356).

The relevant provisions in the Idaho Constitution conferred upon the Regents of the University of Idaho more extensive powers–". . . general supervision of the University, and the control and direction of all the funds of, and appropriations to, the University . . . (Idaho Constitution Article 9, Sec. 10)"–than those conferred by the Utah Constitution on the University of Utah regents (*Board of Examiners,* 1956, p. 358).

The Utah court concluded with the observation that every university which has been held to be autonomous has language in its state's constitution, similar to that found in Minnesota and Idaho, granting powers not found in the Utah Constitution Article 10, Sec. 4 (*Board of Examiners,* 1956, p. 359). The dissimilarity between Utah's Constitution and those in Minnesota and Idaho–dissimilarities known to the framers of the Utah Constitution and hence presumed intentional–were designed, reasoned the court (*Board of Examiners,* 1956, p. 360), to result in the denial of CS to the University of Utah.

There may have been other facts which influenced the court–they were certainly noted by it–in deciding against CS for the University of Utah. First, in the first legislative session (1896) following the adoption of the new Utah Constitution, ten legislators who had been delegates to the convention and who had voted then for the provision regarding the universities as that provision was finally drafted, voted as

legislators for a law dealing with the university and its management (*Board of Examiners,* 1956, p. 362). Second, for over 50 years the legislature had passed laws regarding the university, and never before had the university raised the issue of independent control: "After these 50 years of acquiescence it is difficult to understand this sudden quest for independent control (*Board of Examiners,* 1956, p. 368)." Finally, nowhere in the proceedings of the constitution convention could the court find an expression of intent that the legislature be barred from acting in matters pertaining to the purposes and government of the university, except for location, which was settled (*Board of Examiners,* 1956, p. 368).

Louisiana presents a slightly different situation. The Louisiana Constitution (Article 12, sec. 7) provides that Louisiana State University "shall be under the direction, control, supervision, and management of a body corporate to be known as the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College." On the face of it, this language would seem to be among the strongest in the country in terms of vesting exclusive and comprehensive powers in the governing body of the institution. The Court of Appeal of Louisiana, however, has recently ruled that a general state statute establishing a maximum fine of one dollar for violation of parking regulations at any state-supported university is applicable to Louisiana State University notwithstanding the above quoted constitutional provision (*Student Government Assn. of LSU v. Board of Supervisors,* 1971).

The constitutional provision in question was approved by the people in 1940. Almost concurrently the legislature enacted a statute detailing the powers of the university board of supervisors. The court in the case cited held the constitutional provision not to be self-executing, that it obviously was limited to creating the university and contemplated and required implementing legislation, and finally, that the legislature's concurrent enactments support this interpretation. Thus has Louisiana State University become subsumed to the legislature. This outcome could have been avoided had the court chosen to read the statute regarding traffic fines as an exercise of the general police power of the state, in which case the statute would have still applied to the university but would not have carried with it the broader implication of legislative control over the university. The Board of Supervisors' apparent CS could thus have been left intact.

As the situations in Minnesota, Utah, and Louisiana illustrate, there is no really precise test for calculating, in advance of any judicial

decisions in a state on the subject, just how a court will interpret a particular constitutional provision which appears to confer CS on an institution. In Utah, for example, the court made much of the fact that the universities were *not* constitutional corporations. By contrast, the universities in Michigan, Minnesota, California, Idaho, and Colorado are corporations under their respective constitutions–corporate status is an important corollary to CS. Numerous cases in these four states refer to the fact that the university, besides being provided for in the constitution, is also a corporation. Drawing on teneral corporate legal theory the courts etch out a measure of autonomy for the institution from the fact of corporate status alone. Illustrative of this phenomenon is a landmark California case.

In 1940 one Mr. I. R. Wall, a private citizen, sought to prevent the University of California from hiring Bertrand Russell to teach at UCLA. The Court of Appeals refused to interfere with the decision of the regents to employ the philosopher (*Wall v. Board of Regents of the University of California,* 1940). As the court put it, drawing on the body of general corporate laws for authority (*Wall,* 1940):

> The board of regents constitute a corporation . . . [and] this court has no right to interfere with its government. The conclusions reached by the regents are final in the absence of fraud or oppression. 'It is an elementary principle of law that a court has no power or right to intermeddle with internal affairs of a corporation, in the absence of fraudulent conduct on the part of those who have been lawfully entrusted with the management and conduct of its affairs. . . . The principle is so well settled and established in both federal and state jurisdictions that it seems unnecessary to give further citations.' . . . The authority of the directors in the conduct of the business of a corporation must be regarded as absolute when they act within the law. The court cannot substitute its judgment for that of the directors [p. 534].

The concurring judge (McComb) was more sensitive perhaps to the special status of the university under the constitution and to its role as an educational institution (*Wall,* 1940):

> The question of Dr. Russell's qualifications to act as an instructor at the University of California is one lving solely within the discretion of the board of regents, and their determination of his qualifications is final,

> Experience has demonstrated that the people of the state have wisely vested this discretion in the board of regents, as it is a matter of international knowledge that the University of California has under the guidance of the board of regents become one of the great universities of the world and that the university possesses a faculty composed of educators of the highest standing [p. 534].

On occasion, judicial interpretations of constitutional provisions relating to a university appear somewhat strained. In this respect Missouri is in a class by itself. Keeping in mind that a number of states with universities possessed of CS incorporate preexisting statutory frameworks for their institutions in the state constitutions and vest the power to control or supervise or manage the institution in a governing body, the Missouri Constitution of 1875 (Article II. Section 5) read as follows:

> The General Assembly shall . . . aid and maintain the State University now established with its present departments: The government of the State University shall be vested in a Board of Curators . . .

On the face of it such a provision would appear to confer CS on the University of Missouri, and some commentators have thought so. (See Hicks, 1963, p. 241). Not so, however. The University of Missouri is subsumed to the legislature. The term "government" has been given a very restricted reading by the Missouri courts.

A 1915 Missouri legislative act (the so-called Buford Act) sought to direct the establishment by the curators of departments of engineering and mechanical arts at the university branch school in Rolla and to confer certain kinds of engineering degrees there. The curators refused to comply with the legislative directive, contending that their constitutional prerogatives to govern the university, more or less exclusively, were being impinged upon by the statute. The state sought, and ultimately obtained, a writ of mandamus compelling the university to comply with the provisions of the act (*State ex rel Heimberger v. Board of Curators of University of Missouri,* 1916). In its decision the Supreme Court of Missouri interpreted the provision of the 1875 Constitution vesting "government" of the university in the curators as not depriving the legislature of the power to add departments, since the term "government," the court said, refers to such activities as "guidance, direction, regulation, management, control"

and *not* to concepts such as creation, origination, or the like (*Heimberger,* 1916, p. 134). The legislature's power to add departments or schools and to cause new degrees to be issued was thus confirmed by the court.

It may have been significant in the court's decision, just as it was later in Utah in 1956 (*Board of Examiners*) that for many years (50 in Missouri, 70 in Utah) prior to the 1915 Buford Act, the Missouri General Assembly had regularly legislated on university affairs and had never been challenged. This pattern of acquiescence, coupled with the legislature's power to appropriate, also duly noted by the court, may have been persuasive in arriving at a decision subsuming control of the university to the legislature. In any event in 1945 the Missouri Constitution was amended to read as it currently stands [Missouri Constitution (1945), Article 9, Sec. 9 (a)]:

> The government of the state university shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate.

The 1945 constitutional provision, the judicial history that preceded it interpreting the 1875 constitution, and subsequent litigation interpreting the new provision all clearly identify the University of Missouri as *not* among those universities possessed of CS, even though at one time in its history the university might be deemed to have had such status and, given a favorable climate in the courts, might have obtained the judicial confirmation so important in other states.

In Utah, Louisiana, and Missouri the judicial disconfirmation of CS, when it finally came, was swift and sure and accomplished in one or two significant decisions. In Nevada the state constitutional provisions themselves which relate to the university are ambiguous: The legislature is directed to establish a university (Article 11, Section 4), to provide for its "support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law (Article 11, Section 6)," and to prescribe by law the duties of the Board of Regents of the university (Article 11, Sections 4 and 7). Further, the constitution provides that the regents are vested by the constitution with the power to "control and manage the affairs of the university and the funds of the same under such regulations as may be provided by law (Article 11, Section

7)." Obviously, the constitution contemplates an important role for the legislature in university affairs. Yet at least one commentator has suggested that the University of Nevada enjoys CS (Newman, 1963). In 1948 the Nevada Supreme Court invalidated a legislative attempt to create an "advisory" board of regents for the university and described at length the character of the university's status under the state constitution (*King v. Board of Regents,* 1948).

The court ruled in that case that "executive and administrative" decisions are for the regents in their right to control the university, and that these prerogatives were exclusive of such right in any other state department or agency "save only the right of the legislature to prescribe duties and other well-organized legislative rights not here in question (*King,* 1948)." The legislature, in other words, retained the power to prescribe and define duties, to require presentation of budgets, to exercise traditional control over appropriations, and to legislate in other respects as it deemed fit, such as with respect to loyalty oaths (Newman, 1963, p. 7). Endorsed by the court in the *King* case as applicable to the University of Nevada situation were precedents from other states invalidating legislative attempts 1) to establish non-regental boards to approve construction contracts or to supervise university finances, 2) to move a medical college from one city to another, 3) to require the university to deposit proceeds from the sale of property with the state treasurer, and 4) to prohibit nepotism in the university (Newman, 1963, p. 7).

Despite contentions, then, that the University of Nevada is clearly among those universities with CS, such a conclusion appears problematic, particularly in comparison with other constitutionally autonomous universities in other states. The University of Nevada is not so clearly beyond the legal reach of the legislature on non-appropriation matters as are other universities which have CS (e.g., Michigan, Colorado, Minnesota, California). For example, the university's need to comply with general state statutes relating to planning, purchasing, personnel, budgeting, and the functions of the state controller is ambiguous and uncertain (Newman, 1963, pp. 8-9).

In Alabama and Arizona the constitution appears to confer some measure of CS on the respective institutions. However, court decisions and attorney generals' opinions over the years have so nibbled away at the autonomy presumably provided in the constitution that it is difficult to say exactly just what the situation is in these two states. Very little autonomy may be left.

The Alabama Constitution (Article 14, Sec. 264, Amendment

161 respectively) provides that the University of Alabama and Auburn University shall each be "under the management and control" of a board of trustees. The constitution also provides that the legislature cannot change the location of either institution except upon a two-thirds vote of that body (Article 14, Sec. 267). Each university is a public corporation.

The interpretation given these provisions by the Alabama courts and attorney general reflects a CS a good bit less clear and unambiguous than, say, Michigan's or Minnesota's. On the one hand, according to the attorney general in an early opinion, Auburn University (and the same could be said of the University of Alabama) is under the management and control of the board of trustees, whose "authority cannot be interfered with by the law-making body of the State, for the trustees and the Legislature derived their powers from the same high source (Rep. Atty. Gen. Biennial Report for 1919-20, p. 445)." The same attorney general's opinion, reciting cases from Michigan as authority, discusses the exclusivity of this control and management in the hands of the trustees and their absolute control over funds allowed to them.

Yet, it also appears that the two universities *can* be required to purchase their supplies through a central state purchasing agency and that appropriations may be conditioned (as indeed they can be to some extent in states with strong constitutional status) by the legislature for the accomplishment of certain purposes which the universities are required to fulfill if they accept the funds (Rep. Atty. Gen. Biennial Report for 1919-1920, pp. 445-451). The two universities have been held to be institutions of the state, their trustees mere officers of the state, and their property state property (*Denson v. Alabama Polytechnic Institute,* 1930; *Cox v. Board of Trustees of the University of Alabama,* 1909. See also *Stevens v. Thames,* 1920). Because of this, each university shares in the sovereign immunity of the state and cannot be sued, notwithstanding the fact that each institution as a corporation has the power to sue and be sued, and each enjoys the power of eminent domain as each shares in the sovereignty of the state.

Further, university employees are subject to the general state statute relating to travel of state employees (Rep. Atty. Gen., Quarterly Report, 1969). It also appears that each university is represented by the attorney general, who represents other state agencies; that the books, records, and accounts of each are subject to examination and audit by the state auditing department; and that nonappropriated

funds are subject to the same limitations as are other state funds when it comes to travel expenses, gifts (e.g., watches, bracelets, charms), greeting cards, coffee, refreshment, entertainment, flowers and the like—the latter series all having to do with expenses in connection with post season football games (Rep. Atty. Gen., Quarterly Report, 1971).

In Arizona, the "general conduct and supervision" of the University of Arizona is vested in a Board of Regents under the constitution (Arizona Constitution, Article 11, Section 2). The legislature is given the power to create such institutions under the same provision (*Board of Regents of University of Arizona v. Sullivan,* 1935). Notwithstanding the legislature's power to create, the vesting of the "general conduct and supervision" (by Article II, Section 2) in a board of regents has been held to invalidate an attempt by the legislature to include university employees (except faculty) within a general state civil service system and under control of a state civil service board, an attempt which "would necessarily deprive the board of regents of a large portion of its constitutional supervisory power (*Hernandez v. Frohmiller,* 1949)." The university regents, as against the state auditor, were held in an early case to be supreme within the scope of their duties in the matter of deciding how to spend university funds (*Fairfield v. W. J. Corbett Hardware Co.,* 1923). A later case modified this holding somewhat, and in so doing limited the powers of the board of regents to the point where they are something less than supreme. The regents, said the court, are required to be audited by the state auditor, whose duty it is to approve claims for wages, to determine whether the claim is for services falling within the purpose of the appropriation against which the warrant is to be charged, and to determine whether the payment is for a public purpose (*Board of Regents v. Frohmiller,* 1949; *Frohmiller v. Board of Regents of University and State Colleges,* 1946).

Finally, it appears the board of regents of the Arizona universities is exempt from supervision of the state planning and building agency with respect to university construction, the exemption however deriving both from the constitution and from statute, the legislature having chosen to legislate on the subject and itself to exempt the university (*Board of Regents of the Universities and State College of Arizona v. City of Tempe,* (1960). That case described the powers of the regents as almost equally dependent upon the constitution and legislation, which accords with the fact that the constitution directed the legislature to create the institutions of higher education. Cur-

iously, the dispute in the *City of Tempe* case involved the applicability of city building codes to Arizona State University—the city arguing the institution was somehow separate and apart from the state, and the regents arguing they were part of the state. It was conceded by both parties that the legislature could assign exclusive jurisdiction to the regents or the city. The court held the university to be part of the state for these purposes, acknowledging that in other circumstances the question of whether the board of regents is the state in a legal sense might be decided differently. Thus, the university does not fall within the general limitation on state indebtedness (*Board of Regents v. Sullivan,* 1935). The university is covered by the general state minimum wage law (*State of Arizona v. Miser,* 1937).

In conclusion, universities with CS do not all possess such status in the same degree and do not enjoy whatever autonomy they have simply as a result of constitutional language vesting management and control in a governing board of regents. Policymakers should be aware that CS, in a legal sense, derives from a variety of interdependent factors. As will be seen in later discussion elsewhere, real autonomy is also a function of a host of non-legal considerations: tradition, the political winds in a state at any time, the popular respect accorded higher education or the institution or its administrators, faculty and students, and other concerns not founded entirely in the legal framework provided for the institution. Still from a legal standpoint, it is important to focus on constitutional language. How "exclusive," for example, is the management, control, and supervision of the governing body to be? What powers are given elsewhere in the constitution to the legislature, the governor, the auditor or comptroller, and the coordinating board with respect to fiscal or management activities of the university? It makes a difference whether or not the institution is a public corporation; it is also enormously important to realize that courts and attorney generals can make official and binding interpretations of the legal status of the university; and a pattern of legislative involvement and regulation, particularly if unchallenged, can result in an impairment or diminution of CS. All of these concerns should have a place in the minds of those attempting to decide whether and how to go about conferring CS on a university.

STATUTORY STATUS

Although institutions with constitutional status (CS) are among the largest and most distinguished of all the public colleges and

universities in the country, they constitute only a very small number. By far the majority are what we refer to as statutory (SS) institutions. They are created by legislative enactment, and while they may be referred to in the state constitution, they are in nearly all respects subject to legislative control. They are often referred to as "creatures of statute," "state agencies," or "state departments." It is important to note that the term "statutory institutions" does not refer to colleges and universities which are private, municipal, federal, mixed public/private, or to those organized as taxing districts, as are so many community colleges.

Legal Status of Statutory Institutions

The legal status of statutory institutions is suggested by the terminology; they are state institutions, education being an acknowledged governmental function, and they are owned and operated by the state. They are legally equal and coordinate with other state agencies, such as state departments of fish and game, highways departments, state police departments, departments of corrections and prisons, state hospitals, budget agencies, coordinating boards for higher education, and all the other myriad state boards, commissions, departments, agencies, bureaus, and the like, all created by statute for the accomplishment of some legislatively approved purpose.

Differences Between Statutory Public Institutions and State Agencies

There are some differences, nevertheless, between statutory public institutions of higher education and many other state agencies, although the distinctions are only penumbrally legal. We may say there are two categories of state agencies: those which provide services and relate to the general welfare (such as state universities and colleges, hospitals, and welfare departments), and those which represent an exercise of the general police powers of the state and are regulatory in nature (such as the state patrol, utilities commissions, and insurance departments). The distinction in these instances is not always clear, but there may be a clear legal difference between, say, a statutory university and a public utility. The university is national, or at least regional in its "jurisdiction": Its students and faculty come

from all over the region or the country, if not the world. The utilities commission has a "jurisdiction" confined to the state, except as it has an indirect effect on national corporations, interstate rates, and so on.

There are also other differences. For example, although a newly elected governor commonly has power to appoint the heads of state agencies, a statutory university is not likely to be so affected. The governor normally waits until a term of one of the members of the governing board expires before he can make an appointment. Though the governor may be an ex officio board member, he is only one of several. In any case, the governor does not usually appoint the president of the institution, however much he may try to influence a particular appointment. Another difference is in organizational style. Although more and more universities are tending towards managerial bureaucracies, their management tradition is collegial and collaborative, rather than strictly hierarchical.

None of these differences is unrelated to the legal status of statutory institutions. Courts do take note of such characteristics as these and others. Generally such SS institutions are created by legislatures and may legally be abolished by legislatures. But while state constitutions may direct the legislature to establish these institutions and may prescribe their location, or the composition and manner of selection of the board, their distinguishing feature is that they are subsumed to legislative control, and this means they can be made to comply with all sorts of state government and executive agency procedures regarding planning, budgeting, coordination, construction, auditing, personnel, and the deposit of funds with the state treasurer. The legislature can pass laws affecting almost any of the affairs of SS institutions, subject only to the constraints imposed by the state constitution and the federal constitution (such as those relating to speech, assembly, academic freedom, press, etc.).

With such powers at its disposal, unchecked by the constitutional autonomy of the institution, legislatures have passed statutes relating to new programs and departments, student admissions, expulsion and discipline, degrees and diplomas, scholarships and loans, dormitories, bookstores, student union buildings, counseling centers, infirmaries, athletics, publications and printing, and the use of institutional lands. SS universities are normally subject to state statutes relating to condemnations and eminent domain, gifts and devises to the state, bonding, tort liability, and so on. They may be made to comply with any condition attached to their appropriation; at least they cannot claim, as a university with CS can, that the condition is an

unlawful impingement on their constitutional prerogatives to manage the institution. They are frequently advised and counseled by the state attorney general, who normally also advises all other state agencies. And as suggested earlier, they ususlly must comply with requirements and procedures imposed by the state auditor, the state treasurer, and legislative officials.

There are other general laws of the state which usually apply to SS institutions and, to the extent that they are exercises of the general police power of the state, they may also apply to institutions with CS. Included, though to be sure not always applicable, are such laws as conflict of interest statutes, vaccination laws, collective bargaining laws, administrative procedures acts, and acts against discrimination.

Statutory Institutions and Autonomy

Such autonomy as the SS institutions have derives from circumstances or sources other than the state constitution and its provisions.

1. Some autonomy may result from the normal amount of administrative discretion permitted most statutory agencies or institutions in making decisions or exercising administrative powers. The discretion inheres in the doctrine of implied powers by which a legal entity, such as a statutory university, exercises powers delegated to it by a legislature. There are limits to the amount of discretion that can be exercised, but the important thing for institutional autonomy is that discretion exists at all, even within roughly prescribed limits. The attention given the idea of "accountability" in recent years suggests the kinds of limits which exist to administrative discretion.

2. A second legal basis for the autonomy of SS institutions of higher education resides in the sheer weight of their academic traditions on legislatures, state executives, and courts, all of which usually have been chary of becoming involved in internal academic affairs of the institutions, as is evidenced by the general absence of laws dealing specifically with such matters. Although financial constraints are currently legitimating some legislative and executive inquiry into academic affairs, it is rare, although not unheard of, to find statutes mandating such matters as the teaching of particular courses, the establishment of new departments and majors, and requirements for graduation and doctoral dissertations. The excep-

tions that do exist—regarding the establishment of American or state history requirements, ROTC courses, a school of nursing, a college of engineering, or a homeopathy chair are just that—exceptions. The operating norm is legislative, executive, and even judicial noninvolvement in these matters. Hence, the Washington Supreme Court, in refusing to invalidate a loyalty oath (later declared unconstitutional by the United States Supreme Court), expressed its reluctance to overturn 50 years of tradition at the university associated with the institution's tenure regulations (*Nostrand v. Little,* 1960; *Baggett v. Bullitt,* 1964). In most cases, the loyalty oath case being an exception, the abstention by other governmental branches from involvement in the affairs of SS institutions, and the autonomy such restraint consequently permits, is a result of the radiation outward from the institution of the doctrine of academic freedom, and is an instance in which that freedom which is personal in nature (although it cloaks the academic profession as a whole) protects the autonomy of the institution, rather than the institution's autonomy protecting the freedom of individuals.

3. A third means by which the autonomy of SS institutions of higher education is preserved is through the enactment of special statutes or provisions that either specifically refer to them or specifically except them from general state legislation. Decisions to create such special legislation or exceptions usually reflect the judgment that universities and colleges are different from other state agencies, that they have special problems and styles of governance, and that their unique and traditional ways ought to be respected by the legislature and executive. Hence, a university may be specially exempt from the general state civil service law, collective bargaining statute, administrative procedures act, purchasing act (with respect to scientific equipment) or the requirement that the main office be located in the state capital.

4. A fourth means of providing for some degree of autonomy for SS institutions normally subject to legislative and executive powers is to establish them as public corporations—an expedient resorted to in quite a number of states. The results are not entirely clear or uniform, and vary widely from state to state. Generally, the effect is to remove the institutions from the jurisdiction of certain executive agencies (for example, the attorney general), although not from the legislature's continuing powers to pass laws affecting the institution. The crucial variable is the language creating the corporate institution in the first place and scope of the powers granted or retained by the legislature.

The universities of Hawaii, Illinois, Maryland, and Wisconsin are all corporate in character, as are the principal universities in many other states, such as Alaska, Alabama, Florida, and Oregon. Usually a public corporation has power to contract, to sue or be sued, and to take and hold property in its own name. SS institutions which are not corporate generally have the power to do the same things, only in the name of the state. The practical significance of this, of course, varies.

The Illinois Supreme Court, in what has become an often-cited description of the legal position of the corporate statutory institution, in this case of the University of Illinois, has stated (*People v. Barrett*, 1943):

> While it is true that the legislature has created a separate corporate entity, its powers are limited by the act of its creating. Such powers are limited to the purposes for which it was created. By creating the corporation and conferring upon it the powers delegated by the act of its creation, the State has committed to it the operation, administration and management of the University of Illinois. While the legislature has the power at any time to modify or change, or even may take away entirely the powers thus conferred on the corporation, it can only do so by legislation. As long as the present statute is in force, the State has committed to the corporate entity the absolute power to do everything necessary in the management, operation and administration of the university. . . . The only power the State can exercise with reference to the administration and operation of the university is by limiting or withholding appropriations, or by changing the statute. It is a public corporation, created for the specific purpose of the operation and administration of the university. As such, it may exercise all corporate powers necessary to perform the functions for which it was created. . . .
>
> It functions solely as an agency of the state for the purpose of the operation and administration of the university, for the State. In doing this, it functions as a corporation, separate and distinct from the State and as a public corporate entity with all the powers enumerated in the applicable statutes, or necessarily incident thereto. It has and can exercise no sovereigh powers. It is no part of the State or State government . . . As such corporation it may formulate and carry out any educational program it

> may deem proper with complete authority over its faculty, employees and students, as well as all questions of policy. Incident to its corporate existence and the exercise of its corporate powers, it has the undoubted right to employ its own counsel . . . . [pp. 340-44; 347].

Perhaps the only respect, as suggested earlier, in which corporate status enhances autonomy of a SS institution is that it often frees the institution from certain day-to-day routines imposed upon it by executive agencies, although the extent to which this is true depends on the language of each chartering statute and the amendments thereto. The meaning of corporate status for the autonomy of the statutory university is well stated by Brody (1935):

> The purpose of conferring on the state university an autonomous organization, a distinct legal personality, is to facilitate the institution in entering into private legal relations on behalf of the state, to subject it to legal liability, and to remove its purely institutional and business functions from the domain of political interference. The university is thereby permitted freedom in internal affairs, while at the same time, control over its general policies is retained by the state. It may enter into valid legal contracts in its own name and not as the mere "alter ego" of the state, and may have specific funds provided as a means of paying its debts. It may determine its own internal organization; it may regulate and manage its corporate property and, as a necessary incident, may sue and be sued where the assertion of its corporate rights or the enforcement of its corporate liabilities require such proceedings. Notwithstanding its separate corporate existence, a state university does not possess any status independent of its position as a mere instrumentality of government. Their statutory corporate capacity is incidental to their governmental capacity, and is of value to them only because it makes it possible for them to own lands and property, to enter into contractual relationships, to sue and be sued. Even in these respects the corporate action of the university is not permanently fixed. For its property is subject to the power of the legislature, which may at any time take it away, and except in such instances where restrictions are imposed by the state constitution, the legislature may deprive a public

university entirely of its corporate powers [pp. 141-142].

The final and perhaps most startlingly simple means by which an institution with SS may be accorded a measure of autonomy is for the state legislature to enact a statute declaring it autonomous. This has taken place in Maryland, where the state legislature in 1952 passed what has come to be known as the "Autonomy Act," the principle portion of which provides as follows (Annotated code of Maryland, Article 77A, Section 15[e]):

> Notwithstanding any other provision of law to the contrary, the board of regents shall exercise with reference to the University of Maryland, and with reference to every department of same, all the powers, rights, and privileges that go with the responsibility of management, including the power to conduct or maintain such departments or schools in said University and in such localities as they from time to time may deem wise; and said board shall not be superceded in authority by any other State board, bureau, department or commission, in the management of the university's, with the following exceptions . . . .

A list of exceptions follows, however, which demonstrates the vulnerability of legislatively conferred autonomy. While the university is permitted its own civil service system, it must remain comparable in most major respects (rights, privileges, appeals, pay, retirement, and leaves) as employees in the regular state civil system. The state treasurer and legislative auditor are endowed with broad powers with respect to control and audit of university income and expenditures, and the university is required to supply any information about its operations requested by the Board of Public Works or any legislator. University budgets are required to go through the Department of Budget, and the state budget director, the chairman of the senate finance committee, and the chairman of the house ways and means committee are required to be invited and may attend board meetings at which requests for appropriations are prepared. Finally, the governor, the state treasurer, and the state comptroller are required to be notified of meetings of the board of regents and may attend if they desire.

It is clear, therefore, that although the autonomy given the university under the act was not total because some state involvement is clearly retained—this involvement has less to do with control over it

than with the right to information and knowledge. Overall, some rather sweeping exemptions were in fact granted the university from control by state departments, bureaus, boards, and commissions.

To sum up, none of the many sources of whatever autonomy SS institutions enjoy can alone or in combination offset the fundamental legal subordination of such institutions to the legislature. More than is the case with universities possessed of CS, SS institutions are dependent in a legal sense upon what amounts to legislative and executive largesse for whatever autonomy they enjoy primarily because they are subject to legislative enactment and executive orders and procedures. And yet both types of universities are alike in some vital respects: Both are subject to the ultimate appropriations powers of legislatures and to general police power legislation, both are exempt from taxation, and both are subject to constitutional limitations under the Bill of Rights.

2

SOCIAL AND ORGANIZATIONAL SETTING

The previous chapter detailed the historical controversies between the universities and the state government which resulted in legal decisions by the courts. Only a minute fraction of the interactions that universities have with their state government, however, ever get to court, even in the most litigated circumstances. Each year, hundreds and even thousands of contacts—formal and informal—take place in the generating of higher educational policy and the funding of university operations.[2] Thus, mutual impact must be assessed against these myriad interrelationships and the general social and governmental trends of the times if one is to gain more than a narrow, legalistic, and often misleading, view of the influence which the state exerts over the university.

This chapter begins with an assessment of some of the major social trends which influence the university, whether it has constitutional status (CS) or statutory status (SS), proceeds with brief descriptions of the staff agencies of state government which are the main focus of this study, and then presents the bulk of the results gained from intensive interviews held in 1971-72 with the chief members of those staff agencies and with university and college leaders in eight states. Four of the states in the study (California, Colorado, Michigan, and Minnesota) have constitutional universities,

[2]The three basic works based upon research and survey techniques which have dealt in part with state relationships to higher education are Berdahl (1971), Glenny (1959), & Moos and Rourke (1959).

and four (Hawaii, Illinois, Maryland, and Wisconsin) have statutory universities. In each case the institution studied was the one commonly referred to as "the university," or, in the Carnegie Commission's term, the "flagship" university. In each of the eight states, the relationship to the state of the other state colleges and universities is compared to that of the leading university.

SOCIAL AND POLITICAL TRENDS

The political influences and relationships of state government to higher institutions are governed at least as much by social and political trends which transcend various sets of social institutions (such as colleges and universities) as by trends generated from specific actions or inactions of the higher education community. Although college professors and administrators adhere to the notion that the world, or at least this nation, revolves around the production of knowledge and its dissemination, this is true only in the most indirect way (Bowman, 1971).[3] Knowledge in modern society is potential power and influence (Waldo, 1970).[4] It does lead to wealth and control, prestige and status. But while universities produce much knowledge, they seldom develop that knowledge to the point of direct, usable application in the society; and when they do, the academics themselves are seldom the direct wielders of the resulting power. Faculty members are frequently consultants to persons who reap the gains of knowledge, but they seldom share in the influence which aggregates to those in authority. For example, the progress made in mathematics, symbolic logic, and philosophy took centuries of work by scholars to get to the point where a graduate student, applying this knowledge to electrical circuits and switches, established the basis for the modern computer industry. But it is IBM and Texas Instruments which wield tremendous state and local political and economic power and heavily influence national and even international political policy, not the academics with the capabilities to produce knowledge. Hence, the academics contribute mightily to the social and

[3]For an assessment of the various assumptions which may account for the capital growth in education, see Bowman (1971).

[4]Waldo argues that the university is becoming a power center because of its production of knowledge, and thus will become more and more involved in power politics.

technological progress that characterizes the society, but other persons in other places set the trends in motion which often come back to haunt them.

Five general trends are mentioned here from among many because they appear to contribute most to the increasing interrelationships between state government and higher education: the new populism, the steady growth in power of the governor, the financial position of the states, the new priorities in social services, and state reorganization leading to a systematic planning approach to solution of state problems.

Each trend has been stimulated, informed by, or supported by experts from the academic world. Indeed, in dealing with the various problems associated with these trends, the academic man is looked to as the principal source of knowledge and expertness. He is asked to take leaves-of-absence from his university to work with the political arms of government or its operating agencies, or he becomes a consulting confidante of leaders in such arenas (and is later criticized by some of these same leaders for not spending more time in the classroom).[5] Perhaps his role as consultant and critic leads to some of the trends which directly affect the university.

The New Populism

The populist trends in the larger society have led to a new attitude about the university and its role, a change which fundamentally affects the capability of the university to perform those functions the academic world considers most essential.

Growing numbers of people are currently reasserting themselves against the institutions of modern society. From a period of relative passivity, they are moving to activism, intervention, challenge, and at times disobedience. Disturbed and frustrated by a feeling that despite all the material progress that technology has brought, they seem to have lost some of the very essence of living itself. It is the quality of their lives that they question. They want to be involved and they want to make their involvement count for something. Family relationships are being challenged through easy divorce, permissive abortion laws, more equity in property settlements, birth control,

[5]Hofstadter & Hardy (1952) have observed that: "Further state regulatory commissions were often manned by university teachers, and a veritable system of interlocking personnel evolved between the university and state government. . . .
By its opponents the university was occasionally accused of 'ruling the state' [p. 47]."

easier stance toward homosexuals. Public officials are harassed through pickets, letter campaigns, recall threats, and general indignation meetings. Industrial giants are subjects of criticism for their role in polluting the environment, promoting militarism and war, and providing goods which are useless, harmful, or at best nonrepairable. New research and muckracking Ralph Nader-like groups spring up across the land to influence the people and policymakers. Drinking laws become more permissive and 18-year-olds are given the right to vote. Women demand equal rights and liberation from traditional roles. In all, the trend is for people no longer to stand in awe of officialdom or grant it respect, whether it be of the church, industry and business, or government.[6] Size, wealth, prestige, family, and status are not protections against the new wave of populism. Neither is education—particularly higher education. The populists distrust its liberalizing influences and are dismayed at its inability to solve the great social problems of the day. They think the university spends too much time and effort on research and graduate education, to the detriment of undergraduate teaching and quality education,[7] although no hard evidence is ever presented to show that research has ever contributed to the deterioration of an institution. While they distrust the radical student, they are inclined to accept his criticism that the university is overcommitted to military and industrial research and consulting, and keeps on professors who ignore all students except those advanced in their own specializations. For a time, student rioting, faculty strikes, and the seeming inability of boards and administrators to control the institutions turned the people away from the university. Even today the community-at-large seems to favor the teaching institutions: state colleges and especially the community colleges.

Power of the Governor

A trend which started about the time of World War I and continues to this day is for the state to concentrate more and more of

[6]Harris Poll reported in *The Chronicle of Higher Education,* December 4, 1972.

[7]Some of the university professors appear to believe this too, although the conclusions are drawn from little or no research on the subject. See the lack of clear evidence, for example, in Mayhew (1973).

the policymaking and enforcing powers in the chief executive officer. The more complex government has become, the greater the acceleration toward this power concentration.[8] At one time, governors were considerably less than equal to the legislatures in the power to control policy. Today, as one legislator reported, "We wonder why we meet at all." The governor's staff prepares the state budget and includes in it the programs and services he favors. That budget can be tinkered with by legislators but seldom fundamentally changed. If changed to the governor's displeasure, he vetoes, since he often has the authority to veto not only large programs or whole appropriations bills, but also single line items. At times he can even reduce the amounts the legislature has appropriated. When it is time to implement and administer the programs, total control rests with the governor. His agencies suggest the rules and regulations, establish the procedures, hold the hearings, and set the priorities. His central staff, primarily his Department of Administration or Budget Office, supervises state agency operations for conformity to the law and for holding to the governor's political priorities. Higher educational institutions, with their competitive aspirations, overlap in program, spiraling costs, and large size have become of increasing concern to the governor and his central staff; what is expended on higher education cannot be used for other needed services and programs which may be more politically popular.

Strong reaction to concentrating power in the governor has been slow in coming and, on the part of the legislature, may be too late. Nevertheless, legislators now set up offices of legislative analysts, auditors, and performance reviewers in both strong and weak governor states. They staff such offices with professionally trained persons in order to obtain independent sources of information, analyses, and expert advice. Whether this challenge to the governor can really succeed over time is difficult to predict, but the odds favor the governor (see Chapter 3). Nevertheless, whatever the long-range consequences, the agencies of the state, including colleges and universities, are caught in the power conflict between the two state political organs, the legislature and the governor. While a university may at times gain advantage from the political chaos, it will more likely be subject to demands for information, reviews, hearings, and harassments from both the governor and the legislature and, in the latter case, the demands come from four or even five different professional

[8]If the trend has not gone far enough, there are scholars who would centralize even more power in the governor's office. See Walker (1970).

staffs representing that many different legislative committees. Moreover, each committee may be pursuing a different set of goals, some in conflict with other committees, and perhaps all of them at odds with those of the governor. Among the higher institutions caught in the middle, the university finds itself most vulnerable because of its lost popularity.

The Financial Position of the States

The new populism demands that government respond directly, quickly, and thoroughly to new social needs. It also expects existing programs to continue to expand, to be more comprehensive in scope and more equal in application. The federal government often develops new programs or expands the old which call for more matching monies from state revenue funds. The new social priorities, whether of federal or state devising, usually require state financial participation. While the demands for funds increase, the sources to be tapped do not multiply commensurately. Indeed, most new taxes turn out to be increased rates on old taxes. The income and sales taxes are now relied on most at the state level, with lesser support derived from a multitude of small special taxes on various commodities and transactions. While people in this nation have always thought taxes too high, the extraordinarily high expenditures at the national level for the military and past wars, and at the state level for welfare and schools, create a particularly negative reaction to further tax increases, as proved by the high proportion of turndowns when tax rates are submitted to referendum. Higher education has been one of the most expensive state expansions. Its absolute proportion of state general tax revenues has increased by 33 percent since 1962, depending upon the particular state.[9] That rate of increase has made higher education one of the very large items in the state budget, one which focuses attention not only on the politicians, but on other agencies and school systems which see an unwelcome and insatiable competitor.

New Social Priorities

From time to time, because of certain felt needs, societies single out a particular service or function for favor. State government

[9]See Glenny & Kidder (1973) for a report of trends in state funding of higher education.

once gave priority to roads, and then to prisons, public schools, and later to unemployment aids, welfare, health departments, and mental health. From the 1950s to 1969 higher education, among other services, fared well. But during that time the university failed to maintain its competitive position among the various types of higher institutions. Recently, community and junior colleges have grown in number and size and have received a larger and larger proportion of state money.[10] The enrollments of state colleges also have increased faster during this period than those of the university. Thus, the university has serious new rivals for state funds, and it no longer receives the lion's share as it did in the 1930s and '40s. Concomitantly, as the university loses its dominant position among higher institutions, financing for all of them is losing its high position in social priorities. The attention often drawn in the past by students and faculty now focuses on eliminating pollution, protecting the environment, expanding parks and opportunities for recreation, and extending the scope and coverage of health care to all people. University financing faces ever greater competition. Legislators and governors look for places to save money in order to reallocate it to new uses. The university, with its recently swollen budget—however legitimately it may have grown—is a most vulnerable prospect.

State Reorganization

Reorganizations of state government have resulted in the consolidation of literally hundreds of separate boards, commissions, and councils into a relatively few departments under control of the governor. In addition, other constitutionally elected officers, such as treasurer, controller, auditor, and superintendent of schools have had their functions slowly stripped away and placed in agencies also controlled by the governor. Much of the rationale for a reorganization that centers responsibility on a single, visible, political leader is related to curbing the corruption that was so prevalent in the many independently accountable boards and commissions. Justification also rests on increasing the efficiency of government by coordinating its services

[10]See Glenny & Kidder (1973).

and programs and keeping costs as low as possible.[11]

In the last decade or so, the management and systems techniques developed by the Department of Defense and large industry have been urged upon state governments. (Very persuasive are efforts of citizen study committees consisting of management experts, from various business and finance fields, who thoroughly analyze government and agency operations and make recommendations for their improvement.) With the growing complexity of their problems, political leaders are attracted to program budgeting, management information systems, and the systems approach to the solution of governmental management problems. The result is more reorganization, more central reviews and staff services, and more controls over expenditures and budget formulations. Sophisticated professional staffs are replacing the former political appointees and technical clerks in legislative and executive offices.

During the late 1960s, the public and its political representatives became disillusioned with higher education. The academics, in spite of great promises, had not solved the nation's problems or those of the states. They were not as omniscient or far-seeing as the public had expected. Awareness that other experts in both public and private spheres were no more successful did nothing to condition this attitude.

Part of the disenchantment also grew out of the disruption of universities by students and faculties which challenged assumptions about university objectivity and devotion to the development of new knowledge and its dissemination. Political controversy in turn led to distrust of the universities' influence on students and their values. Do higher institutions make students more radical? Are faculty members inculcating bad social values in relation to sex, property, responsibility, and reverence for family, home, and church?[12] The more conservative segments of the society accepted affirmative answers to these questions about faculty members (while rejecting all the evalua-

[11]In 1968 Governor Reagan of California consolidated into four super agencies the many separate departments still reporting to him. The 1972 Illinois plan for reorganization proposed the creation of ten departments to consolidate over 100 agencies considered to be under control of the Executive. The Illinois report summarizes reorganization efforts in 28 states during the period 1967-72. See Office of the Governor, *Beyond bureaucracy*, State of Illinois, 1972.

[12]Keniston & Gerzon (1971) and Clark, et al. (1972) have supplied evidence that student values and attitudes do change toward the unorthodox and the liberal and away from the traditional.

tions of the society-at-large made by radical critics), and legislators began to question the number of hours of teaching and the real workload of faculty members.

The uneasiness that faculty members were not working, or that if they were it was on personal and professional aggrandizement, was reinforced in the popular press by reports of the overproduction of doctorates.

Collectively, these factors gave the public and the politicians the impression that higher institutions of learning, especially the leading universities, were poorly managed and inefficiently operated.

While higher education has never been considered just another agency of state government subject to the same controls and interventions as welfare, health, or highways (despite rhetoric to that effect by some politicians and bureaucrats),[13] political leaders, in responding to public concerns (and at times capitalizing on them politically), seek ways to increase faculty and administrative responsibility, focus authority, and reduce the rate of spiraling costs.

What means do governors and legislators have at their disposal to encourage or even force change in a public agency or institution? Invariably, what can be done depends on a great many political, organizational, and procedural variables, as well as on what Millett (1970) calls the dependence on "basic attitudes and the force of personality of particular political leaders." However independent of government one may view higher education, the state universities are dependent in large part on state funds for their sustenance whether they have constitutional or statutory status. While the university may view the state's share as no more than another of several subsidies received from different sources, this particular subvention comes from the government which gives the university legal status and which, up until the past few years, provided the vast bulk of its financial providence.

The state has two branches of government (governor and legislature) with very specific constitutional duties to perform in relation to all agencies and institutions established under the constitution or under subsequent statute. One of these duties is to provide funding for the maintenance of state agencies and institutions. In so doing, the government must ascertain the amount of money each unit is to receive. The amount depends in turn on how much is available to the

[13]In the Illinois reorganization report of 1972, higher education is not even mentioned, and it was not an area for reorganization in Maryland in 1969-70.

state (general revenue) and how that total is to be distributed among the several agencies, offices, and institutions. The control of the allocation process may properly be considered the exercise of the ultimate political power of the state. Just how then should the amounts be determined for the state university? The university would like its request, whatever the amount, to be considered as a minimum for operation—an amount which should neither be closely questioned nor controlled, if appropriated. The state, on the other hand, sees the univesity as an essential institution to be financed, but not as the only essential one, or, given the social pressures and priorities of the moment, the most essential one. Thus, for funding purposes the university is "just another agency of the state," and one which—with other state colleges and universities during the 1950s and 60s—received a larger and larger proportion of all state general revenue funds (Glenny & Kidder, 1973). That proportion, according to state officials, cannot continue to increase indefinitely, or other state services would need to be curtailed or eliminated. What proportion or amount should the university receive?

Faced as they are with making that political determination as well as similar determinations for every agency of the state, the governor and legislature have established various agencies, bureaus, and officers to aid them in setting priorities and making judgments on financial need. To be fair and equitable in new allocations, the state must also ascertain how well the previous expenditures have been managed and spent. Badly managed agencies or those which support low-priority activities (such as foreign language study or research) must be awarded new funds only if they change their ways.

As a result of the major trends that have been cited, and others that were both corollaries and contributory, state legislators and governors concluded in the late 1960s and early '70s that state universities were neither well managed nor had their priorities in the right order. Moreover, the new social priorities are expensive and have to be added to the state budget, which must also continue to provide for old but essential functions. Given such a situation, what does the state do? The answer is that it treats higher education, in large part, just as it does the other agencies it funds.

As the systems analysis approach to state operations is adopted, at least in part, the governmental agencies reviewing budgets and programs increasingly seek a good deal of management and operational information. They wish to know about unit costs, workloads, productivity, and the administrative efficiency not only of

higher institutions, but of all state agencies. Higher education presents a special difficulty in that its "units" and "outcomes" are not so easily categorized or tagged with a unit cost.[14] Beyond that, the internal governing structure and those persons to be held responsible for various of the institution's activities and functions cannot easily be detected—not even to reward, much less to question. Beyond these internal problems associated with each college or university are those associated with questions about which of them should be performing specific functions or undertaking specific types of research or service. How does the state keep every college from becoming identical in program and function with the leading state university? What criteria should be used? How are they to be applied? By whom?

From this brief overview, it becomes apparent that the state has constitutional responsibilities in relation to higher institutions, and that it has the problem of establishing priorities not only among colleges and universities, but also among all other existing and proposed functions of the state.

Which state agencies make decisions about the university, its management and program, and its place among the constellation of state offices, agencies, and institutions?

STATE AGENCIES CONTROLLING THE UNIVERSITY

The following is a brief delineation of the offices and agencies which become involved in the review of higher education budgets at the state level. The actual interrelationships which have significance for autonomy or independence of the university are dealt with in subsequent chapters.

The agents and offices are subgrouped under three principal classes: those the governor uses in review and later in administration, those the legislature uses in review and appropriations, and the coordinating agency the governor and legislature have created to obtain professional and lay advice and recommendations on the various facets of higher education. Except for Hawaii, which has no coordinating board, the agents listed were found in all eight states in

[14]The National Center for Higher Education Management Systems at Boulder, Colorado, is attempting to define "units" and "outcomes" and to develop management technologies applicable to higher institutions in the mode of PPBS, cost-benefit analysis management by objective, etc.

our sample. No state had exactly this list by specific title or function; the titles given here are generic and the functions typical.

Agents of the Governor

Department of Administration. The governor's principal agency, the chief of which is usually his senior policy advisor. It often contains sections for budget, audit, management analysis, and central purchasing.

Budget Bureau. Primary responsibility for the form and detail of budget preparation, initial review, executive staff hearings, establishing formulas, and standards. Prepares the governor's executive budget. In strong governor states, it is the most important of all agencies; often a section of the Department of Administration.

Department of Public Works and Buildings. Reviews building budgets, sometimes after dollar ceiling is established by Budget Bureau. Sets space and building standards, hires architects, designs buildings, and builds and accepts the buildings—often in close cooperation with the institution concerned.

Civil Service Commission or Personnel Board. Frequently considered outside the governor's political jurisdiction. Sets classifications, job descriptions, salary schedules, hiring conditions, workloads, and fringe benefits. In some states, controls the positions to be filled by operating agencies.

Higher Education Facilities Commission.[15] Administers the federal Higher Education Act of 1963 and at times is given other functions to perform for the state. Plans for long-range space needs and keeps an inventory of space and space utilization for all institutions, public and private, in the state. In a third of all states throughout the country, this function is given to the coordinating agency for higher education.

State Scholarship, Financial Aids, and Student Loan Commission. Administers one or more student aid programs for the state and increasingly for federal loan and/or grant programs. Determines which students are aided by setting criteria and also the amounts. In most instances, works through institutions to get aid to students.

[15] In 15 of the 27 states having state coordinating boards for higher education, the federal functions are performed by the coordinating board. In other states separate commissions were formed.

Agents of the Legislature

Legislative Analyst or Auditor or Fiscal Bureau. Does in-depth studies, reviews budgets, provides analyses and recommendations to legislature or joint budget committee. Most powerful staff agency for legislature.

Joint Budget or Finance Committee and its Staff. Consists of members of both houses. Usually has a staff, sometimes quite large. Performs the functions of a legislative analyst in states that do not have a single analyst for the legislature as a whole. Reviews budgets, briefs committees on salient questions and problems, often holds informal hearings without any legislators present.

Appropriations and Education Committees and their Staffs. Usually each house has both committees, with small or nonexistent staffs if there is a legislative analyst or a staff for the joint budget committee. If there is no such analyst or staff, the appropriations committee may have a good-sized staff; education committees rarely do. Staffs review budgets, prepare analyses, raise salient questions, do leg work for chairmen of committees.

Interim Legislative Committees and/or Legislative Council. Does special studies, holds public hearings, and often prepares reports with accompanying bills for introduction.

Coordinating Agency

Powers vary greatly among states. Sometimes includes powers that are attributed above to the governor's or legislative staffs. Advises both governor and legislature on any matter of higher education. Usually responsible for state master plan on higher education, reviews and approves new programs and degrees, reviews, budgets, makes recommendations to governor and legislature, and administers one or more federal programs. Often works on the budget in rather close collaboration with budget bureau. Agency has often been "captured" by the institutions or, more recently, by the governor.

3

EFFECTS OF STATE ACTIONS ON THE UNIVERSITY

CONTROL OF EDUCATIONAL PROGRAMS

For analytical and presentation purposes the findings of the present study are divided into three areas: academic programs and their management; funding, budgeting, and operational management controls; and the results of a questionnaire which elicited opinions about the relative influence of each agency on several dimensions of educational policy.

Program Types and Content

Both universities with constitutional status (CS) and those with statutory status (SS), tend to have a great deal of autonomy to develop, control, and otherwise offer educational programs. Historically, agencies of the state intervened very little if at all. If programs were controlled, it was by the governor or the legislature. While this condition largely persists, the coordinating boards–and to a limited extent the executive budget office–now make some decisions about priorities of new programs and the nature of the individual programs finally approved.

The legislatures, and at times the governors have occasionally intervened in the establishment of new programs, primarily in response to some well-organized pressure rather than out of a predilec-

tion for dictating educational program or policy. This has been and continues to be true of the programs which have high public salience at a given time. Osteopathy, homeopathy, public health, welfare, and other professional areas close to the people are likely to be those which receive attention, and with respect to such matters, CS and SS types of universities were found to be about equally vulnerable to what could be considered suggestions, if not mandates.

For example, among those with CS universities, the Michigan legislature was urging (not directing) that departments of community health be established in the medical schools; the Minnesota legislature provided money and established a graduate school of social work at the Duluth campus and directed that less attention be given to the liberal arts and more to the occupational and vocational programs at the Minneapolis campus; and the Colorado legislature cautioned against the establishment of any new program. It was reported that the governor of California is exercising definite pressure on the university to give more time for teaching rather than to "overemphasis" on research, and he took leadership in pressing the university to transfer the California College of Medicine to the university's Irvine campus.

Among states with SS universities, the legislature in Wisconsin imposed a religious studies program, and in the budget process "for the first time" dealt with deans and department heads in relation to program. The governor in Illinois pressed for more programs in health fields, especially in mental health; the governor of Wisconsin imposed a 15 percent cutback in graduate education funds, although the legislature allowed the university to impose the cut as it wished; and the governor of Maryland encouraged the university to establish an environmental studies center. These activities appeared to be continuing at about the same low rate as they had historically, i.e., with rare exceptions the official policymakers of the state kept out of direct educational policy.

On the other hand, the state coordinating boards and councils, whether they have only advisory or legal control, have been established by the political arms of government to intervene where those arms will not. There is also much similarity between the coordinated treatment of CS and SS universities, as well as some very critical differences.

The University of Hawaii was the only university not subject to coordinating agency action; there is no agency between the governing board for the several types of campuses and the state policy-

making arms of government. The other universities studied were either required to submit all new programs and campuses to the coordinating board, or did so voluntarily. The SS universities by law must submit all new programs and major changes in organization of the university to the coordinating agency for review and recommendations. Such recommendations go not only to the institution, but also to the governor (budget agency) and the legislature (committee staffs). In Illinois the board has final approval over all programs, campuses, departments, schools, and reorganizations. The University of Maryland submits all new programs to the council following approval by a regents' committee but prior to final adoption by the full board of regents.

Among the states with CS universities, only Michigan has a board which under the constitution has the responsibility to coordinate—although the authorization is ambiguous as to its powers and the actual meaning of "coordinate"; the remainder have statutory coordination. Nevertheless, despite CS, the universities in Minnesota, Colorado, and California all submitted new programs to the respective statutory coordinating councils for review. In each case the university officers stated that they did so to show willingness to cooperate in a more orderly development of new programs between themselves and the state colleges and universities. They seemed to believe no great harm could befall them since they "already had everything," and that any constraints applied were likely to be against the "emerging" institutions that were building programs to compete with the university. By cooperating, they felt they were able to receive the endorsement of an impartial agency for a program that later would need funding by the legislature. Moreover, all agreed that if a major decision was made against a program about which they had strong feelings, they would institute the program anyway. The latter point was acted on and proven to be a valid course of action by the starting up of new campuses (with basic curricula) by the CS universities in Minnesota and Michigan, either without submitting the idea for coordinating council approval, as in Minnesota, or, as in Michigan, ignoring a negative recommendation (for its Dearborn campus). In each instance the legislature later approved operating funds for the new campuses.

In contrast to the CS universities, which organize new campuses on their own initiative, the SS universities in both Wisconsin and Illinois found, through hard political and administrative struggles, that it was impossible to establish new branches without the endorsement of the state coordinating agency. The University of Hawaii could plan

and start new campuses without review or consent of a state planning agency, but of course required gubernatorial and legislative approval.

The findings of this investigation confirmed the charge that states are intervening more in academic programs than previously, and that more controls apply to the statutory university than to the constitutional one. The controls tend to be exercised by the new coordinating boards and councils through their power to approve or disapprove new programs, rather than by the legislature through its hearings and appropriations, or by the governor through the executive budget. It is too early, with too few instances to judge by, to determine if the CS universities endanger their legal status by voluntarily seeking coordinating board approval of new programs.

Academic Management Controls

Whereas all the institutions in this study were relatively free of state interference in the type and content of academic programs, the state does engage in activities which have effects on how many and which students are admitted, and the amount of their tuition. Increasingly, the state is also intervening in matters such as faculty and administrative salaries, workloads, and productivity.[16] Assessing the degree of difference between present practice and that of a decade or so ago is very difficult in these spheres. Legislators in particular have historically expressed, in speeches and committee hearings, their positive and negative views about tuition, students, and faculty. Now, however, it appears that the governor, through the professional staffing of state budget offices and the budget process, enters into academic management more than the legislature in management terms.

Tuition

The setting of the level of tuition remains a function of the governing boards in all eight states, but in each of them the governor's executive budget anticipates the total amount which will be raised through tuition. In Colorado the legislature set the tuition in different

[16]Governor Patrick Lucey (1972) of Wisconsin recently commented on his frustrations in making university people understand what an increase in productivity really means, much less get an actual increase. See his article on Wisconsin's productivity policy.

amounts for each of the four campuses of the university. In other states, except California, the tendency is for the state to set or estimate the tuition amount per student roughly. In Illinois the coordinating board recommended as general policy that students pay a certain proportion of the total cost of education. When the proportion was shifted upward the policy was not implemented because of legislative pressure for low tuition. The states have become very conscious of out-of-state tuition levels and in many, directly or indirectly, the tuition it imposes on undergraduates approximates the full cost of their education. Even with inadequate estimates of enrollment, the state manages through budget manipulations to set the actual amount of tuition for any group or level of students.

Appropriation of Tuition

In all eight states, with the exception of California, student tuition is estimated in the budget request, the state general revenue share is reduced proportionately, and/or the tuition amount is appropriated along with state funds. In the SS states, if actual income exceeds the tuition estimates, the university budget is adjusted in the following budget period. In the CS states, overages in tuition income are less likely to be recaptured by the state. Colorado once generated tuition income above that anticipated in the budget and kept the funds, although the last appropriations bill, in 1971, contained a reduction in state payments to the university to exactly offset that overage. In California the educational tuition, originally imposed at the request of the governor, has not been used to reduce the state appropriation in anticipation of the income, although there is a struggle with both governor and legislature over the matter. The university earmarked most of the income, and the legislature appropriated it for capital construction purposes. The university hopes to keep the money out of educational operations for which the state holds a proprietary interest. Previously, the governor adjusted state funds for the medical and dental schools downward in anticipation of an increase in fees for those schools. The university fears the state will eventually treat the general student fee in much the same way.

Admissions

Attempts to limit out-of-state students have been made in Wisconsin, Colorado, and Michigan. This was done primarily by establishing enrollment ceilings or percentage limits for such students, and indirectly setting tuition levels by, for example, decreasing some of the university's funding. Other than through the budget, states have refrained from interfering with institutional practice.

Of the SS institutions, Illinois, because of the need to limit enrollment to a budgeted ceiling, proposed a process of random selection from among all applicants who met minimal qualifications. The proposal met with very mixed and sometimes vociferous public reaction. As a result the governor intervened and forced the university to make selection on traditional (merit) grounds.

Among the CS states, California, in statutes implementing the 1960 Master Plan, set the upper 12 percent (in ability) of students as the standard for acceptance by the university, the upper third for acceptance to the state colleges, and open admissions for the community colleges. The university had already limited its enrollment to the upper 15 percent, but raised the level to comply with the new statute (which it had been instrumental in getting passed). Here the university responded directly to a statute. It was also the only one of the eight universities in the study to which state law applied limitations on the standard of entry rather than on the number of students to be admitted.

In Colorado the state legislature advised the universities that not over 20 percent of first-time entering freshmen could be nonresidents. All Colorado institutions complied with this limitation except the university with CS. Open admissions was not an issue in any of the institutions studied, although in Hawaii there was pressure on the university to allow the free transfer of students among the different types of institutions under control of the university governing board. This was more a problem of student transfer, however, than of open admissions.

Enrollment Ceilings

The state can set enrollment ceilings in two ways. It can establish the enrollments on any campus of its public institutions as a matter of public policy, or it can, in each budget cycle, determine

what enrollment level will be supported with state funds. Some states do both. By these devices a state may manipulate the flow of students from one institutional type to another, as California does.

The other CS universities have no policy or ultimate ceilings established either by the state or their own boards. Again, only the University of California regents have established a policy of enrollment ceilings which are intended to prevail regardless of the number of students turned away from a particular campus. On the other hand, the state indirectly establishes ceilings in each of the other CS states—Minnesota through the funding of certain student-faculty ratios, Michigan through the number of "fiscal year equated" students, and Colorado by the legislature through the appropriations process.

Budget ceilings on enrollments seemingly are temporary and are re-negotiated each budget cycle. These funding ceilings may be exceeded by the institution without incurring the displeasure of either the governor or the legislature; the institution just does not receive state funds for any students taken over the ceiling. Contrarily, if enrollment falls below the funded level for students, the "excess" funds may not be recovered by the state immediately, but even in constitutional universities the allotment process (see below) and the new budget cycle force adjustments to account for the over-appropriation.

The picture is quite different for the SS universities. Three of them (in Maryland at College, Park, Illinois, and Wisconsin) had enrollment ceilings recommended by the coordinating boards as a matter of policy. Only in Illinois, however, did the legislature fully support the coordinating board, although in Maryland the ceiling figure for the university may eventually be that of the funding level allowed by the legislature. Wisconsin, as it consolidated the colleges and universities under the same board and eliminated its coordinating council, had no ceiling policy. In the SS states of Wisconsin and Illinois, the allotment process recovers immediately any funds appropriated in excess of realized enrollments.

Setting enrollment ceilings to preserve a limited campus size may be a practice of the past for most state systems. With the leveling off of enrollments in four-year institutions across the nation, just maintaining the existing number of students will be difficult for most. The state could, however, set much lower ceilings in some institutions and leave others higher in order to continue to regulate the flow of students to particular types of schools.

In none of the states did the government actually set the salary schedules or determine qualification for advancement to tenure. (The state colleges of several states were not thus favored.) Three states with SS universities provided some interference: The University of Maryland had its administrative salaries frozen by the governor for one budget cycle, and they are reviewed each year by the governor's office; in Hawaii, a ceiling was placed on administrative salaries in the middle 1960s; and in Wisconsin the legislature became concerned that lump-sum salary increases were being given to "politically wrong" people, and decreed that for 1967-69 a portion of the merit money was to be used across the board.

The situation on tenure in all the states was summarized in a statement by one administrator: "No erosion, but much talk with regard to the selection and tenure of faculty."

The interviews in CS states elicited many more expressed concerns about faculty workload and productivity than in the SS states. In Michigan the legislature added riders to its appropriations bill for the university, specifying the exact number of teaching hours expected at each level of instruction, and also ordered the state coordinating board to make a thorough study of faculty workloads. As one state officer said, "The legislature might get shook when they get it." In California, budget office auditors are carefully investigating university faculty workloads—a situation which one university administrator attributed to the "interlocking paralysis among regents-president-chancellors-departments and the statewide academic senate, making it impossible to come up with action on faculty workload . . . . [so] we gave it to the political bodies." Another administrator stated that the "Finance people are really sophisticated when it comes to faculty workload." Workload was also much of an issue in Minnesota, and to a somewhat lesser degree in Colorado.

Why workload and faculty productivity constituted lesser issues in most of the SS states can only be speculated on. It seems certain that through budget formulas such as the one in Illinois, which uses unit costs and other similar factors, workload and student-faculty ratios as such are never a direct consideration. (It need not be in any state if productivity units are used along with their costs.) The state management information and allocation system used in Hawaii could produce the same results. In Maryland, where the university operates under its autonomy act, the state seems hesitant to get into the

subject, but is nevertheless moving in the direction of requiring this information. In Wisconsin, the support for merger of the state college system with the university was in part based on college faculties wanting the same workload and perquisites as those of the university, even at a time when the university faculty loads were being questioned.

FUNDING, MANAGEMENT, AND BUDGET CONTROLS

All interviewees (whether drawn from institutions or state agencies) unanimously agreed that state governments were gaining greater control over general university operations. The techniques to achieve this purpose are applied at several different points in the funding and spending process. Some of the most stringent ones occur prior to appropriation in the budget review, others are asserted by the legislature, and still others are applied as management controls after the matter of funding has apparently been settled.

Historically, the court cases show that the CS institutions in this study have largely succeeded in avoiding direct control of any activity by their respective state governments. Indeed, if CS has meant anything substantial, it has been the ability of the university to set its own priorities, move funds freely among its several functions, and manage its own affairs. This condition is rapidly deteriorating in the budgeting and appropriations processes, and to some extent even in the management of the institution. By the application of the devices discussed below, the university's freedom to use its funds for the purposes and priorities set by the boards of regents has given way to increasing inflexibility and rigidity not only with respect to the use of state funds, but also those from other sources as well. Similarly, but with even greater acceleration, any flexibility in use of funds by the SS universities and colleges is also deteriorating.

The findings indicate that the greatest limits on the freedom of universities lie in the continued success of the state to control through the appropriations process. Also, in arriving at the amount that should be generated by state taxes, the state seeks full disclosure of what funds were derived from all non-state sources and of how those funds were expended. Further constrictions in some states come through the allocation process, through controls over the transfer of funds among appropriated items, and through forcing a reversion to the state treasury of all interest derived from the banking of state appropriations.

Constraints on Use of Funds

State Tax Funds

Both the governor and the state legislature have constitutional responsibilities for providing operational funds for the universities. No one argues that the state should not set its own priorities and provide conditions under which its funds may be expended. However, only occasionally, over the years, have legislatures used their constitutional powers to control various aspects of the universities.

The attempts to assert control over CS universities have at times been thwarted by the courts, especially if some officer of the state, rather than the legislature, was delegated power to control. The findings reveal a rather dramatic change in attitude on the part of the legislature, and to some extent on the part of the governor. There are more conditions in line-items of the appropriations bill, more riders attached to the bill, and less freedom given the institution to transfer funds among items or functions. Two of the eight states have had a substantial increase in the regular number of line items in its appropriation. In changing from a line-item appropriation bill to the very detailed "list category" type of itemization demanded by Hawaii's PPB system, the number of items identified increased to about 300, and Wisconsin's from a lump sum to six or eight. Maryland has five or six items appropriated by each campus, and Illinois appropriates six items for overall university operations (three campuses).

The situation for the CS universities is similar: Minnesota and California receive lump sums; Michigan formerly received a lump sum, but now receives six line-items which it regards only as guides; and Colorado receives appropriations for each campus, but may transfer funds under limited circumstances from one campus to another, and must report such transfers to the state.

On the surface, one would deduce from this evidence that only Hawaii is subjected to line-item control; however, in 1971 the Hawaiian legislature authorized transfers among cost categories, allowing a good deal of flexibility in use of funds. The appropriations constraints on the other universities–both CS and SS–are more demanding. Four means are used to exercise these constraints: 1) Through its committee process and hearing records, the legislature establishes its intent as to how certain amounts of appropriation are to be spent; 2) The legislature also makes use of the rider on the appropriations bill to designate specific sums for specific purposes;

3) Through "negotiated agreements" with the university, the governor establishes his own constraints and controls; and 4) Upon application for specific purposes, the state may give the coordinating board a sum to be distributed to the institutions.

Among the SS universities, the restrictions are usually built into the executive budget by the governor and amended into the budget bill by the legislature, or recorded by the legislature as its intent during hearings. Whether the appropriation is a lump sum or designated sums made for only a few broad categories, the restrictions are no less mandatory and no less numerous. The items are identified and, as many legislators and budget officers stated, "They have to come back for more money next year, and we will see what they did." The state budget officer in Wisconsin stated that, "There is a tendency to hold agencies to more and more line items, and the tendency will increase." University officials in Illinois reported a much greater intervention through the budget by the governor's office. The University of Maryland reported that the first legislative interference in the operation of the university since 1951 was in the form of a rider prohibiting salary increases for administrative purposes.

Among the CS universities, the rider and the negotiated agreement are most used. While Minnesota reported that there was "very little specification" in the appropriations bill, it also reported that the many riders were "very punitive." Moreover, at the close of the session the house appropriations committee sent the university a "Bill of Particulars," declaring its intent with respect to a great many different items. A respondent reported that the committee further declared its "intent to hold hearings on the degree to which we've adhered to their requests." University officers have said they would abide by the spirit but not the letter of the conditions.

In Michigan, the legislature included many riders, some even setting faculty teaching loads, enrollment ceilings, and tuition levels. The university considered most significant those riders with exact sums for specific purposes. During interviews, university officials stated that, "We are using conditions in appropriations laws as evidence of our being crowded out of our CS." Since that interview, the university has been successful in a court challenge of these conditions. One legislative staff member, anticipating such an outcome, said, "We knew we were acting unconstitutionally, but we will continue to put in restrictions by one means or another."

In Colorado the riders on the 1971 appropriations bill were "exhaustive." One of them required that the state comptroller

approve the university accounting system prior to release of funds for the medical school. In California, a University of California official stated that, "We have been free of line-item budget control, although there is nothing in the constitution to prevent it." However, California's governor negotiates agreements with the university, with similar results. As another university official put it, "Conditioning appropriations wouldn't accomplish any useful purpose—when the governor and the university agree to something, even though it cannot be enforced, its practical effect is the same: The university is not going to alienate the governor." The governor's budget staff formerly did not examine details of university budgets, but within the last year or so, "We've broken it up into hundreds of functions—now we can get into information on the university."

Federal Overheads

Overhead funds derived from federal and foundation grants have been a source of funds used freely by the institution for a variety of purposes, often those for which direct appropriations cannot be obtained. They have provided a funding margin for experimentation, flexibility, and adaptability. All eight universities in the study received substantial amounts in overhead funds (for some institutions, millions of dollars). Whereas those funds, their amount, and the purposes for which expended, were unknown to state officials only a few years ago, today all such funds are accounted for to the state in one way or another.

There appears to be no substantial difference in the treatment of federal overhead funds accorded CS and SS universities. Hawaii and Wisconsin both estimate such income which is used to offset or reduce the state appropriation, but the same practice prevails in the CS states of Minnesota and California. Illinois reports its budget for such funds both on the income and expenditure sides, but so does Michigan. Michigan does it voluntarily to avoid having the funds offset state appropriations; Illinois is required to by the coordinating board and by the state budget office. Maryland has made an agreement with the governor that half the overheads may offset state funds, while the other half is to be used at the discretion of the governing board. California regents moved from full control of overheads to a similar 50-50 arrangement in the middle 1960s. An ameliorating influence is the common university practice of the universities to make relatively

low estimates of possible overhead income and using any surplus generated. (One university was estimating approximately half the income it actually received.)

Federal and Other Grants

Only in Hawaii's SS university and in Colorado's CS university were federal grants appropriated (as opposed to overheads from such grants.) In Illinois they were reported to the state but not appropriated. In the remainder of the states such grants were neither reported nor appropriated. Several states, however, resist assuming obligations first incurred under federal grants. The Michigan legislative staffs were particularly firm on this point.

State Allotments

Once state appropriations are made and the governor has signed them into law, the institutions may or may not receive the sum appropriated. Most states have installed a system of alloting part of the funds to the university at periodic intervals, perhaps on a quarterly or monthly basis. Thus, rather than the university getting all its funds at one time, banking it to obtain interest, and drawing on the principal and interest when needed for operations, such funds are now held in the state treasury and doled out more or less as needed. Formerly, it was normal procedure for the university to retain full control of both the principal and interest on its accounts, often not even reporting it to the state, much less using it to offset part of the state appropriation. This absolute freedom to control all funds once appropriated was a recent characteristic of all CS universities in the study and of two SS universities. That situation has shifted very rapidly, so that there is little evident difference on this score now between the two types of institutions.

Among the SS universities, those in Wisconsin and Hawaii reported the most constriction through allotment procedures. Hawaii looks upon its appropriation not as a minimum, but as a ceiling above which the government will not spend. Funds are allocated on a quarterly basis under a quarterly operational plan submitted to the state budget agency, but may be reduced if state income has not kept pace with anticipated revenue. Moreover, the state budget office may be

selective in fully funding some agencies and reducing others, and may also release funds only for certain items in the budget and not for others. Salary savings made during any quarter revert to the state unless special justification is made for them. Unquestionably, this was the university most closely controlled through allotments. While Illinois also reported attempts by the state to exercise more than nominal control by this device, that university received quarterly allotments based on its estimate of need, and also retained any savings from one quarter to the next. The state of Maryland provides its funds to the university in the more traditional single lump sum, but the funds are kept in the state treasury.

The CS universities, with the exception of Colorado, have also come under fairly strict allotment procedures. Minnesota gets its funds in 12 installments, and may carry over any unused funds from the first year of the biennium to the second. A rider on the 1971 appropriations bill, however, places a modest ceiling on the amount of money that can be carried in the operating revolving fund—an attempt to keep as much of the appropriation under state control as possible. The University of California draws 10 percent of its funds initially and thereafter draws its money on a monthly basis as needed. In drawing funds, payroll totals, and equipment and maintenance, estimates and records are submitted to show need. Michigan, until two years ago, had a revolving fund amounting to about $2 million, but the governor and legislature appropriated most of it, leaving only $200,000 or so. Colorado has allowed its CS university to continue the traditional practice of receiving all of its appropriation at one time. The university then places it on deposit at banks or otherwise invests it as it desires, drawing from the deposits as needed for operations, and "pocketing" the interest earned.

The University of Colorado was the only one able to draw all of its funds from the state treasury and place them on deposit elsewhere. All other states keep all appropriated funds in the state treasury subject to the allotment process, with any interest earned by the treasury accruing to the state, not to the institution.

Transfers of Appropriated Funds

Usually 12 to 18 months or more elapse from the time the faculty and administrators in a university begin preparation of the budget to the time when the appropriation is made available. During

this period, shifts occur in enrollment patterns, in program priorities, and in the popularity of certain programs—along with a host of other unpredictable events. Universities desire full freedom to shift funds from program to program and function to function as the dictates of changing needs demand. States, however, have increasingly placed blocks in the way of free transfer of funds from one budget category or line item to another. Most states with SS institutions now require the institution to gain permission from some official state body before making transfers. Usually that body is composed of some combination of state officials and legislators.

The contrast between CS universities and those with SS in approval of transfers was marked. In every case, the CS universities maintained their prerogative to transfer funds at will (being mindful all the while of the admonitions contained in riders, bills of particulars, and declarations of legislative intent). Among the SS universities, Maryland seemed most free; it could transfer funds freely within certain categories of line-items appropriated to each campus, needing the governor's signature only for transfers of funds among campuses. Wisconsin had broad authorization to shift funds within program areas, but faced more and more designated line-items in its budget which required approval of the governor and several legislators. The state of Illinois attempted to impose strict transfer requirements on the university by creating a series of cells for each program or fund and then prohibiting transfer among functions without state budget office approval. But the university, claiming it was a public corporation, successfully insisted that such controls could not be imposed, although it did acquiesce to seeking approval of both the coordinating board and the bureau of the budget in making transfers among the six large object line items of its appropriation bill. Once again, the University of Hawaii seemed most closely controlled; it could not transfer funds to its several campuses, and it required budget office approval to transfer among specified line-items.

Other Revolving Funds

The interview instruments used did not provide for eliciting information about foundations, endowments, or other types of permanent funds or fund-producing activities. In discussions of institutional flexibility, several instances emerged of such funds that were under the complete control of the university. Each of the CS univer-

sities has the power to receive and hold property in its own name (board of trustees), to invest its funds, and otherwise to manage resources gained from sources other than the state. While federal overheads and grants seem subject to public display, other funds may never come to public attention. An official at the University of California stated what seems typical of the CS university: He said, "The university can take and hold property in its own name, can spend money as it wishes, and can interpret the donor's intent to benefit the university." University officials held this to be one of the key powers it derived from its CS. The only CS university for which access to income from dedicated funds seemed in jeopardy was in Minnesota, where the state offset a major portion of income from the state appropriation for the first time in 1971, leaving only about a third of the money to be spent at university discretion.

All the SS universities also maintained foundations or dedicated funds which remained outside the control of the state. The University of Illinois used its foundation for a variety of purposes, including the pre-purchase of land and property as it became available in the Urbana-Champaign area, which it later sold to the state as funds were authorized for expansion. The University of Wisconsin holds many important and valuable patents, the royalties of which augment its foundation. The foundation awards the university several million dollars a year for capital construction and operations from such funds, none of which are accountable to the legislature or governor. The University of Maryland maintains a non-budgeted fund, composed of its fees for a vast overseas educational program, many other self-supporting activities, including federally sponsored projects, and certain gifts and grants. The fund amounts to well over $50 million, and according to one university official, the state is now looking at the fund more closely than it has in the past.

Management Controls

The advances made in the development of modern management systems by industry, the Department of Defense, and various governments have substantially influenced the attitudes of state politicians and officials as they deal with the state colleges and universities. Indeed, politicians and state officials interviewed in all eight states were virtually unanimous in their view that the state university was not well managed. Hence the growing reliance on imposing state

managerial controls and lessening autonomy for the colleges and universities.

The direct applicability of some management systems and techniques to higher education has been questioned and perhaps feared by educators.[17] In the present study, administrative activities such as personnel systems, central purchasing, auditing, and information systems have been arbitrarily separated from the management of certain educational activities, such as the setting of tuition levels and rates, admissions standards, enrollment ceilings, and faculty workloads (discussed earlier in this chapter). Much overlap between the two classes of activities is apparent even to the unsophisticated, but since the detail collected in relation to all these activities for each of the eight universities varied considerably in quantity and validity, the division provides a more meaningful analytical framework than could be formulated by casting all items in one class.

Repeatedly, in the course of interviewing, the "atrocity" stories that surfaced in the states with SS universities related to personnel and equipment purchasing. As discussed in the previous section, CS states expressed more concern about the loss of flexibility in use of funds. The greatest state interventions were in state college affairs—especially in Maryland and California—rather than in the universities, even in SS states.

If constitutional provisions authorizing the board of trustees to "manage and control the affairs" of the university have any real meaning, it is in this area of administrative management. All the evidence was that CS universities are not subjected to state merit or personnel classification systems, nor to the rules and procedures requiring all or some purchases to be made by a state central purchasing office.

[17]In the spring of 1973 the American Council on Education specifically raised the issue as one requiring study and analyses before massive implementation of the various technologies.

Also see Wildavsky (1967) : on the general applicability of PPBS to government services, and Niskanen (1972) who comments from his perspective in the U.S. Office of Management and Budget that "the U.S. experience with these methods suggests that, as yet, they have neither substantially changed nor significantly improved the process of making budgetary choices."

Personnel Systems

In relation to nonacademic personnel, CS universities establish their own merit system, which at times closely parallels that of the state. For example, at the University of Minnesota the regents' rules incorporate by reference the state laws dealing with public employees and labor relations. At times a university differentiates certain classifications from the state system to avoid direct comparisons on working conditions and pay. Only in Colorado was the university's control over its nonacademic staff apparently in jeopardy. A state constitutional amendment was worded in such a way that the governor's staff believed the university had been brought into the state system. However, when the provision became operable the university remained exempt. Some interviewees attributed this outcome to the legislature's opposition to the expense of raising salaries of university personnel to match those of state employees. Others stated that a technicality in language created a slight difference from a previously adopted constitutional amendment which brought the university under state audit practices. University officials said they would be willing to come under the state civil service on a voluntary basis, but ultimately the legislature opposed appropriating the funds necessary to bring the university into the system.

The SS universities in Wisconsin and Hawaii were under the state merit system for their nonacademic employees. Hawaii also imposed control over the hiring of such employees. Illinois, under the leadership of the University of Illinois, has long established a separate merit system for all state college and university nonacademic personnel, controlled by the institutions themselves. Maryland's autonomy act exempted the university from state civil service, but required that comparable salaries be paid in classifications similar to those of the state service.

Central Purchasing

All universities with CS were exempt from state central purchasing, although at least one of them occassionally joined in big purchase orders with other state colleges and universities to economize.

Among the universities with SS, Wisconsin was required to make all purchases through the state. The state of Maryland recently

created a Department of General Services to purchase for all state agencies, but the university, after an exchange of letters with the new department, maintained its traditional exemption. However, to obtain better prices, the university does make some purchases, especialy of automobiles, through the state. In Illinois, the elected state officer in charge of central purchasing attempted to obtain legislation placing the universities and colleges under his jurisdiction. He sent a group of investigators unannounced into one of the state colleges during the legislative session to uncover any bad practices that might exist. Collectively, the state colleges and universities are fending off purchasing control for the time being. In Hawaii, the university comes under state purchasing except for items furnished by a single source, but has obtained permission to have university cars painted a particular color and to buy outsized desks for deans and vice presidents, the state previously having allotted such desks only to the directors and deputy directors of state agencies. The state controller has allowed such exceptions because of the "uniqueness of the university."

Postaudit and Performance Audit

Until the late 1960s, the postaudit performed by state governments centered on the legality of particular expenditures rather than on efficiency or quality of functions or programs. The postauditor is usually an independently elected official, or is appointed by the legislature. No evidence was found in this investigation that these postaudits were being conducted in any more rigid or careful a manner than in previous years, although the constitutions of two states (Michigan and Colorado) with CS universities had been changed to bring the universities under the state auditor. Formerly, these universities had hired their own audit firms to conduct the work; bothstill do, even though the state also audits.

The substantive change in audit practice is the creation of an office for performance or program auditing—getting at "efficiencyand effectiveness of university management." These auditors usually operate under the supervision of the legislature or one of its committees. (The governor's budget staff is in an even more favorable position than the legislative officer to audit performance.) Part of this legislative response is to the belief that the universities are not well managed, but part also is a counteraction to the ever-increasing power of the governor in financial and fiscal matters. There is little doubt

that legislatures set up such offices hoping to exact more rigorous evaluations of efficiency than was ever attempted by traditional post-audits for legality of expenditure.

Among the CS universities, both Minnesota and Colorado seemed not to be subject to actual performance audit. Nevertheless, the legislative analysts promised to determine the degree to which the universities responded to intent and to legislative riders. Much the same attitude was displayed in Michigan, where the legislative analyst intended to program audit the riders on appropriations bills. The fact that most of the riders were likely to be declared unconstitutional (and subsequently were) did not daunt the analyst. While California has long had a legislative analyst who reviews budgets and makes special studies, it is the governor's office which in 1971 assigned 20 auditors to various aspects of operations of the university. As one university official said, "There are so many auditors tramping around now, I don't know what they are doing." One California state official indicated that perhaps the university could object to the auditors under its CS, but that it probably did not do so to avoid a confrontation with the governor. These auditors make special analyses of particular operations, such as student aids, library management, purchasing, and faculty workloads. The state budget staff asserts that it is merely trying to gain the same level of knowledge about university operations as it has of the state colleges. The apparent intent in each of these states is to bring pressure to improve university management and to use information gained as a means for reviewing the next round of budgets more effectively.

The universities with SS are more subject to performance audits than the CS universities. Illinois is the only state which has not made major moves in this direction, although there is statutory authority for such audits. The state officers in Wisconsin promised to have full performance auditing in operation by 1974: "What is new is the institutionalization of the legislative audit function." They intend to get into workloads, new programs, faculty salaries, and other matters. One university officer stated, "Flexibility will be coming to an end as the legislature identifies more and more line-items to be accounted for in a performance postaudit." Hawaii is also moving in the same direction, with the auditor's staff already as large as the governor's budget staff. It intends to conduct in-depth studies of a number of university operations and to get as directly as possible at program performance. "We are already getting into faculty load,

overloads, ETV, etc. The legislative auditor's staff will continue to become more powerful."

Information Systems

Modern management requires an extensive information base, yet higher institutions have been slow in establishing management data bases. Many reasons may account for this, but it is partly because the leaders are not familiar with the new systems and partly out of historic reluctance to inform the outside world (or even themselves) about institutional operations. Some officers fear the information will be used against the university. Management information systems (MIS) established by the universities result more from outside stimuli than from internal compulsion. Coordinating boards and councils lead the way to fairly comprehensive systems in several states, with state budget offices in others demanding somewhat more specialized information focused on particular high-visibility problems.

The CS universities appear to be no further ahead or behind than the SS universities in establishing MIS. The University of California was one of the leaders in the nation to develop MIS and provide analytical services for the statewide campus network. Notwithstanding its information base, however, the university itself historically provided the legislature with only a skeleton budget and virtually no data to back it up. In the 1960s much more information was furnished, but now the state budget office and the legislative analyst want access to information on a continuing basis from all state institutions. They wish to apply a common MIS to all types of institutions and to provide their own analytical services rather than rely on those of the institutions. The budget officers say, "We need comparable data from all segments, which we will use judiciously with respect to the different functions of the institutions." The university prefers to furnish sufficient information for establishing a budget formula or base, but not enough to allow "fishing expeditions" into university operations. However, the state auditors and special task forces examining university affairs did produce their own information in 1971-72 which was then said to be used against the university.

In the last three years, the University of Colorado has done much to develop a MIS, as has the coordinating council in the state. The coordinating council seems likely to dictate the form and content of any statewide system, as it already has in many respects. Minnesota

and Michigan have put relatively little pressure on the CS universities for systematic reporting of data. In Michigan, the legislative analyst was trying to obtain certain information, but with very uneven and partial results. (Under the court decision holding that the various state agencies and the legislature were encroaching on the constitutional rights of the universities, the court also held that institutions must furnish to the state such information as the state required for budgetary purposes. Subsequently, the governor has implemented a PPB system which requires extensive institutional information.) Historically, Minnesota has also reluctantly shared knowledge with the legislature and governor. But officers of both the university and the state agencies reported that in 1971 the university flooded the legislature with all kinds of information and "sometimes simply befuddled the legislators with a bewildering array of data." Much specific information sought by the legislators, however, was not made available or else furnished too late in the session to be of value. An outside observer of the budget and information battle between the university and the legislature observed, "UM, by giving more information, gave the legislature a chance to see what has been going on for a hundred years—and the information was used against the university." The university is now anxious to set up a credible information system. At the time of the interviews, the university was quickly moving to be able to provide meaningful unit costs. It appears likely that the coordinating council will set up a statewide system for all Minnesota institutions.[18]

The universities with SS are about in the same condition and relationship to the state as those with CS. Illinois was one of the early leaders in establishing a fairly comprehensive MIS within the university, which was extended by the coordinating board to apply to all public institutions in the state, resulting in one of the most extensive information bases in the nation. But as one top university official remarked, "Before they didn't know what we taught and weren't bothered. Now they know and they're horrified." The University of Hawaii got at least a two-year lead on the state government in establishing its extensive MIS. The same consultant was later hired by the state to aid in setting up a statewide management system for all state services. At the moment, the university can furnish almost any infor-

[18]For a subsequent account of how the university responded to the 1971 state budget review, see Moos (1972).

mation requested by the state. Both Maryland and Wisconsin (as does Michigan) have newly established but rapidly developing systems within the universities, and the states have only small information bases. In the last session of the Maryland legislature, a bill was passed placing all state agencies, including the university, under the surveillance of a state management information system. The Maryland attorney general ruled that the new law in effect amended the university autonomy act and thus subjected the university to the provision. University of Wisconsin officials reported that it had begun its MIS as a reaction to the coordinating council wanting to do performance auditing, and to the need for better information from its new campuses.

Operating Budgets

The budget request represents in a monetary form what the university wishes to accomplish in the next budget period. The contents of the document, its form of presentation, the supporting narrative, and the sections based on formulas and guidelines provide the bases for the budget reviews performed by state agencies. The state staff designs the forms and identifies the information to be furnished so that over the years a continuous set of cumulative data is available. Trends may then be discerned and effectiveness of programs and management analyzed. The agency which formulates rules and regulations has an advantage over the university and other state budget review agencies, since the information furnished it comes as a direct response to that particular agency's objectives. Hence, the agency which controls budget preparation and establishes formulas and guidelines has exercised great influence even before the substantive matters submitted have been examined.

In three states the coordinating agency sets the guidelines (Colorado, Illinois, and in part Wisconsin, where the state budget office also establishes guidelines). In California, Maryland, Michigan, Minnesota, Hawaii, and in part Wisconsin, the governor's budget agency performs this function. In California, the format is worked out with the university.

The emerging state of management information systems is reflected in the kinds of data required to support the budget document. Illinois requires the most data, including detailed unit costs, and uses complex formulas to generate about 80 percent of the

budgets. Colorado also uses some formulas applicable, as in Illinois, to all state institutions. Information support and the use of formulas was much more limited in the other states. The primary bases for budget analysis appeared to be the student/faculty ratios at the several instructional levels; often even this information was furnished by the various institutions in the same state without a common set of definitions or forms.

In the collection of data for this study, no attempt was made to ascertain the details of budget preparation, but rather to focus on the process as the budget passed through the various agencies, since the goal was to determine which agencies and offices exercised the important judgments with respect to the budget. Relatively few differences between the CS and SS states emerged. Universities with CS were able to limit the amount of information furnished to support budget requests more readily than the SS universities. They also were able either to ignore state forms and guidelines or at least focus attention on documents generated by their own staffs. One of the surprising findings for all universities was the low salience of budget preparation as against the review processes which followed. Interviews elicited no negative comments about formulas or guidelines, and only a few comments—chiefly in Maryland—about the form of the budget document. The expectation was that states would be moving in on the universities through PPBS, but instead two of the three most professionalized staffs in governors' budget offices held strong reservations about the viability of program budgeting in relation to higher education and other state services.[19] The better budget staffs of all the state agencies were more interested in obtaining valid, comparable data and information than in any particular budget form. To most of them, performance budgeting consisted of the ability to follow up in a subsequent year on certain activities which had given trouble in a previous budget period, or to maintain records on student/faculty ratios and faculty workloads.

Following are a few brief comments on the preparation of the budget in each of the states:

• Of the SS states, Illinois, under its new constitution, has the strongest governor, hence the coordinating board which had had almost exclusive control of the budget for the previous ten years

[19]These conclusions are supported by Wildavsky (1967) and Niskanen (1972). Also see Schick (1971) who indicates that the state experience with PPBS has been less than a success—bordering, in fact, on failure.

found itself in competition with a new state budget office, well funded and professionally staffed. The university found that the many hours ("thousands") spent on budget preparation for the coordinating board were largely lost because the executive budget office made recommendations often widely divergent from those of the coordinating board. This kind of competition between state agencies, revealed so nakedly in Illinois and masked in several other states, is highly costly in time and effort of institutional staff. Nevertheless, the Illinois executive budget office expressed its intention to avoid intervention in internal management problems, such as faculty workloads, faculty/student ratios, etc., as had the coordinating board historically. The coordinating board demanded information on productivity and unit costs, rather than details of internal operations.

In Wisconsin in 1971 (just prior to the merger of the state colleges with the university and the discontinuance of the coordinating council), the state budget office and coordinating council shared in the making of guidelines and formulas. The review emphasis was on new programs and new campuses and the relative funding of campuses within each of the two state systems. The university—especially its new campuses—and the state colleges were treated more alike than was the case in other states studied. Efforts at the legislative and executive levels were made to limit graduate and research efforts on the main Madison campus and to favor the rapidly growing branches and colleges in other locations.

• Hawaii's powerful state executive budget office sends out the forms and guidelines, and reviews the returned documents in detail. The university departs from the forms only for displaying functions or programs unique to the university as opposed to other state services. The state office is becoming highly professionalized and management-oriented. It has pushed the idea of increasing the number of line items and holding the university to them. A legislative standing committee on higher education spends all of its 60 days of activity on university matters.

• Maryland has an executive budget which the legislature may not by law raise in any way unless it also raises taxes to cover the added item. Thus the governor really has the last word about what money will be appropriated. The initial budget review is very important. The review given the university budget does not approximate the detailed study given the state college budgets. This may be because several state officers and legislators are required by the university autonomy act to sit with the governing board when it approves the

initial request. The coordinating council does not review budgets, but it may furnish information to the other state agencies from its special studies on higher education.

• Of the states with CS universities, California has a strong governor system; but until 1968-69 that strength had not been exercised in relation to budget review of the university (as opposed to the state colleges, which had been all but managed by the state budget office for 20 years). The university generally had prepared the budget as it wished, furnishing little supporting information and revealing only that portion of its total budget for which state funds were requested. A senior budget staff member reported that one state analyst "who we were sure would not rock the boat," was employed to review the budget for the nine-campus university. But that day is over. Both the budget office and the legislative analyst (also professionally staffed and very influential in the legislature, especially the senate) are now moving in on the university. Auditors from the budget office seek information within the institution, and the office, largely on its own initiative, but in part because of legislative interest, has set up a joint committee of all segments of higher education to develop common formulas for all institutions. Both of these state staffs are ready to adopt by law the information and management systems developed by the National Center for Higher Educational Management Systems at Boulder. The university is under increasing pressure to furnish management information which can be used in budget analyses. The state coordinating council has had little to do in budget review; it may "comment on the general level of support sought."

• Minnesota required budgets to be formulated under rules and guidelines first established in 1913, and its budget review processes and levels of sophistication roughly reflect that data: The university submits its budget in the form it wishes. As in California, it is only in the last two years that the state, especially the legislature, has taken an interest in the internal operations of the university. Because the governor's budget office is rather weak, the legislature and its staff do most of the requesting and reviewing of information, of which the university now can provide little that is systematically collected and analyzed; but that day seems about to be over. University administrators assured the interviewers that "UM is going to have to regard itself as more of a state agency than in the past and work more closely with the governor and legislature."

• Michigan has a strong governor, but several members of the legislature are so powerful that the executive budget does not neces-

sarily prevail in higher education. The most searching reviews of the university budgets are made by the legislative analyst, and legislative hearings provide most of the tough, formal review. The university reluctantly furnishes data to answer many of the questions and support the requests of legislators. The legislature in turn perseveres in attempting to gain some control over university operations. A university official indicated that, "Any short change we get is attributable to something done the previous year—when we come back to the legislature for more funds, they check up."

• In the weak governor state of Colorado, several different budgets are finally considered in the legislature. The coordinating commission, the governor's budget staff, and the legislature's joint budget committee all prepare budgets, different from one another in format and definition of terminology. One legislator reported that he had considered five different budgets in one session. The coordinating agency provides the most information and analysis, but it also submits higher figures than the other agencies. Hence the gubernatorial and legislative staffs often work from the budget recommendations of the coordinating board rather than the budgets of the university. University administrators viewed the legislature with its long list of riders as the agency which really had to be satisfied in the long run, although they indicated that the coordinating staff was gaining a good deal of power and was more closely associated with the governor than with the legislature.

Capital Budgets

Rather pronounced differences exist between constitutional status (CS) and statutory status (SS) universities in the construction of buildings.

In all cases the CS institution submits its request to the state, where it is evaluated on the basis of general state priorities and those of other higher institutions. The state, as in Michigan, may approve preliminary drawings and set the dollar authorization, appropriations then going to the institution. Various controls, however, may be exercised prior to appropriation of construction funds. In Michigan, the state approves preliminary plans and sets the cost. It also appoints the architect—a point gained by the governor who refused to approve any capital budgets until the universities agreed to this provision. The university receives the appropriated funds and contracts for the

construction. In Minnesota, the university makes its request on its own forms, sets its own construction standards (unlike the state colleges in that state), receives the appropriation, and builds the project. In Colorado, the coordinating council determines space needs, the building type, and approves program plans; but once the legislature has approved funds, the university hires architects and builds the project. In California the university designs and builds all of its own buildings.

All the CS universities can issue revenue bonds in their own name and construct buildings from the proceeds without reference to state agencies. The exception to this generalization is in Colorado, where the coordinating commission must give prior approval to the programs to be housed in the buildings.

Among the SS universities, only Illinois was the university (and state colleges) allowed to receive the state funds, hire the architect, and construct the building.[20] The coordinating board established space standards, efficiency standards for construction, and the cost level. A state building authority sells bonds to underwrite the total cost of construction, but not the purchase of the land. In the other three states, some agency of the state constructs the buildings. In Hawaii, the state planning agency determines the overall construction needs of the state, but the university sets its own priorities on campus buildings. The state controller receives the appropriation, hires architects, and constructs. When completed, the building becomes the property of the university as a corporation. In Wisconsin, the state building commission works closely with the institutions (as such commissions or agencies do in other states) in setting the building program, but the state constructs the buildings for both state colleges and universities. Maryland follows about the same practice.

SS universities may also construct their own buildings through revenue bonding, but in Illinois all such construction projects must first be authorized by the coordinating board and the budget bureau.

RATINGS OF INFLUENCE OF STATE AGENCIES ON HIGHER EDUCATION POLICY

The findings obtained from the intensive interviews reported

[20]Since the interviews were held, a statewide Capitol Development Board has been created, which has full control over capital construction at the universities.

in this chapter were supplemented by an opinion questionnaire, the responses to which would, hopefully: 1) support some cumulative impressions gained from the interviews about the distribution of power and influence in the state in relation to the university, and 2) determine the degree of convergence of opinion by the leaders themselves about which agencies really influenced higher education decisionmaking.

Each person interviewed was asked to fill out a short questionnaire requiring him to record his appraisal of the percent of total influence for each agency listed. Although the number of persons interviewed in each state was relatively small, they were, with few exceptions, the chief administrative officers of the several agencies which were to be rated, e.g., state budget officer, university president, legislative analyst. Thus, their opinions on the relative ratings of influence draw upon first-hand working relationships.

Four different functions were rated: operating budgets, capital budgets, academic programs, and planning. No attempt was made to equate the number of interviews among the agencies, nor of number of interviews in state agencies with those in universities. Thus, the results in some states may be biased. Offsetting this possible condition, however, was the general finding that the persons reporting in each state held fairly consistent perceptions of the agencies' relative influence; with few exceptions, there was common agreement about who had the power and influence. This finding in itself is consistent with the work of other scholars (Banfield, 1961; Hunter, 1953) working on community power relationships.[21]

A particularly interesting finding was that most respondents at the state level rated their own agency as having slightly less influence than the agency was considered to have by other respondents. The exception was the state coordinators, who tended to rate coordinating board influence a bit higher than others rated it, and to rate the influence of institutional governing boards lower than others rated it. If one assumes that the staffs of these boards operate in the "no man's land" between institutions and state government, then their perceptions may be more accurate than other groups of respondents.

Respondents in each state rated state agency influence in relation to the major state university with which this study was primarily concerned, and provided a separate rating for the other

[21] For a recent collection of the literature on community power, see Aiken & Mott (1970).

Table 1

Ratings of Perceived Influence of Institutional Governing Boards and State Agencies on Selected Functions of Higher Education, as Reported in 1971 (in percentages)

Function	*Flagship Universities*		*Other Universities and State Colleges*	
	Institutional Governing Board	State Agencies	Institutional Governing Board	State Agencies
Planning	46	54	41	59
Academic Programs	70	30	62	38
Operating Budget	43	57	37	63
Capital Budget & Construction	32	68	27	73
All functions	47	53	42	58

colleges and universities under that state's control. These separate ratings provided means for making several types of comparisons. Table 1 reveals how all eight "flagship" universities in this study compare with other state colleges and universities in the same states. Examination of each of the functions shows 5-8 percentage points consistently separating the universities from the colleges. The academic program area reflects the greatest difference in influence, although the higher institutions themselves were considered to have greater power over academic programs than all state agencies combined: 70 percent versus 30 percent for universities, and 62 percent versus 38 percent for colleges. This supports the interview data, which revealed that state governments remain wary of substantial intervention in academic programming. On the other hand, for each of the remaining functions, the state agencies are rated as holding a greater proportion of influence than the governing boards—even in planning. The state influences capital construction most, and then in descending order, operating budgets, planning, and academic programs. Overall, the division of power and influence between the universities and the state agencies collectively favors the state—53 percent versus 47 per-

cent, and for the state colleges, 58 percent versus 42 percent.

Table 2 deals only with the eight universities, dividing them between those with CS and those with SS. A consistent difference

Table 2

Ratings of Perceived Influence of Institutional Governing Boards and State Agencies on Selected Functions of the Flagship Universities, as Reported in 1971 (in percentages)

Function	*Constitutional Status Universities*		*Statutory Status Universities*	
	Institutional Governing Board	State Agencies	Institutional Governing Board	State Agencies
Planning	48	52	44	56
Academic Programs	72	28	68	32
Operating Budget	46	54	39	61
Capital Budget & Construction	35	65	30	70
All functions	50	50	45	55

appears in the respondents' perceptions of the two types of universities. The CS universities held from 4 percent to 7 percent greater influence over the several functions than the SS universities. However, the greatest difference between the two types was perceived to be not in academic program, but in relation to the operating budget—46 percent versus 39 percent. In rank order, the state was adjudged to exercise most influence over capital construction, next operating budgets, then planning, and finally academic program. From one extreme to the other, the ratio of influence between the institution and the state is almost reversed. In CS institutions, the university has a 72 percent to 28 percent advantage in academic programs, while in the construction area the state has a 65 percent to 35 percent advantage. Considering all functions combined, the CS universities were judged to divide influence with the state agencies on a 50-50 basis, the SS

institutions on a 45-55 ratio.

Tables 3 and 4 show data on the individual states. Table 3 divides the states between those with CS universities and those with SS universities, showing the breakdown of influence of each of the state agencies and of the institutional governing board (for this purpose the institution was considered the governing board).

The spread in amount of rated influence by agencies varies considerably from state to state, depending on its organizational structure and the division of power between the legislative and executive branches. The even balance between the governors' budget agencies and legislative staffs in the weak governor states of Colorado and Minnesota is clear, as is the gubernatorial superiority in all other states. If one assumes, as do some political scientists, that diffusion of power among many power centers allows more freedom, then Colorado and Michigan provide opposing evidence. Table 3 reveals that although respondents saw power as being most evenly distributed among state agencies in those two states, they reported that both university governing boards retained the least influence of the eight in the study. Hawaii has no coordinating board, which leaves more power in the governing board and gives somewhat more to the state budget office.

Two findings drawn from Table 3 have great significance. Both Minnesota and Colorado have coordinating agencies with more influence than the state budget office or the legislative staffs, and both have CS universities. In SS states, the coordinating council in Wisconsin held the same superior position, and the coordinating board in Illinois was rated just below the new powerful budget office in influence. These findings reveal the growing influence of these relatively new agencies in state government (Minnesota's coordinating agency was formed in 1965, Colorado's in 1965, and Illinois' in 1962). Only for California did the judged amount of influence of the coordinating agency fall below 10 percent.

The other major finding corroborates the interview data, i.e., that universities with CS are faced with legislative staffs that have almost twice the influence of those in SS states. At the same time, the executive budget offices in the CS states have, on the average, less influence than in the SS states. Whereas the ratio of power between the budget office and the legislative staffs in the SS states is more than four to one, in the CS states it is considerably less than two to one. Variations among the states is of course greater yet. The influence of coordinating agencies is substantially less in states with CS than in

Table 3

Ratings of Perceived Influence of Selected State Agencies and Institutional Governing Boards in Higher Educational Decisions, by Legal Status of the Flagship Universities, as Reported in 1971
(in percentages)

	Coordinating Board	Budget Office	Legislative Staff	Public Works	Institutional Governing Board	Other
Constitutional Status						
California	7	24	11	2	54	2
Colorado	25	13	18	2	42	0
Michigan	11	30	16	7	36	0
Minnesota	13	6	7	11	63	1
Statutory Status						
Hawaii	N/A	35	10	2	52	1
Illinois	28	29	5	1	37	0
Maryland	13	33	7	4	44	0
Wisconsin	21	20	5	9	44	0

Table 4

Ratings of Perceived Influence of Selected State Agencies and Institutional Governing Boards on Higher Educational Decisions in State Colleges and Universities (other than flagship), as Reported in 1971
(in percentages)

	Coordinating Board	Budget Office	Legislative Staff	Public Works	Institutional Governing Board	Other
California	9	27	11	3	49	1
Colorado	28	15	20	3	33	0
Michigan	8	24	27	7	34	0
Minnesota	14	14	8	16	48	1
Hawaii	N/A	N/A	N/A	N/A	N/A	N/A
Illinois	33	22	6	0	37	2
Maryland	13	32	6	7	42	0
Wisconsin	23	16	7	9	44	0

those with SS universities.

In summary, the state budget office in both CS and SS states has the most influence after the institutional governing board, followed by the coordinating board, and then the legislative staffs. The judged influence of the budget office comes closest to that of the university governing board in Michigan, Illinois, and Maryland.

Table 4 parallels Table 3, but with data for the other state colleges and universities in the states, rather than for the flagship universities. The significant differences between the data in the two tables again relate to the ratings of influence of coordinating boards and legislative staffs. In states with a SS university, the coordinating boards on the average were considered to have influence equivalent to that of the budget agency, and that agency in turn was rated as having considerably more influence than the legislative staffs. On the other hand, in the states with a CS university, the coordinating board was rated as having substantially less influence than the budget office and the latter office was regarded as having only very little more influence than the legislative staffs. On balance, influence was rated as being much more evenly distributed in SS states.

In comparing Table 3 with Table 4, the most dramatic differences between the main university being considered and the other institutions is found in Michigan. The fact that all the Michigan institutions have CS makes the differences even more noteworthy. It was apparent from attending hearings on state college budgets that the legislators paid very little attention to a CS which had been bestowed upon the colleges by the new constitution in 1963.

Table 5 summarizes the differences in ratings found in Tables 3 and 4 between universities and other colleges and universities.

Table 6 provides a summary of the reported influence held by all the state agencies and all the governing boards in the two classes of states–CS and SS. Worth noting again is the apparent dominating influence of the budget office and the coordinating board in state higher educational affairs, as compared with the influence of legislative staffs. Centralization of influence in the governor's office would be even more apparent if the coordinating board were to be considered an arm of the executive office (which it is in several states not included in this study).

Table 7 displays the rank order of assessed influence of each of the types of state agencies and of the university governing boards. Presumably, the higher in rankings, the more powerful the agency in relation to similar agencies in other states. Interpretations made from

Table 5

Comparison of Ratings of Perceptions of Influence of Selected State Agencies and University Governing Boards on Flagship Universities versus Other Universities and State Colleges, by States with CS Universities and States with SS Universities (in percentages)

	Coordinating Board		*Budget*		*Legislative Staff*		*Public Works*		*Governing Board*		*Other*	
	Univ.	State Col.	Univ.	State Col.	Univ.	State Col.	Univ.	State Col.	Univ.	State Col.	Univ.	State Col.
States with CS universities	14	14.8	18.2	20	13	16.5	5.5	7.2	*48.8	41	.8	5
States with SS universities	20.7	23	29	23.3	6.7	6.3	4	5.3	44.2	41	.3	.7
TOTALS												
All universities	15		23		10		4		47		1	
All state colleges and universities		19		21		12		6		42		1
All institutions in CS states	14		19		15		7		45		1	
All institutions in SS states		22		28		7		5		44		1

*Based on Tables 3 and 4

Table 6

Averages of Respondents' Ratings of Perceptions of Influence of Selected State Agencies and Institutional Governing Boards on Higher Educational Policy, by State
(in percentages)

	Coordinating Board	Executive Budget	Legislative Staff	Public Works	Institutional Governing Board	Other
California	8	26	11	2	52	1
Colorado	26	14	19	3	38	0
Hawaii	0	35	10	2	52	1
Illinois	31	26	5	0	37	1
Maryland	13	32	6	5	43	0
Michigan	9	26	23	7	34	1
Minnesota	13	10	7	14	56	1
Wisconsin	22	19	6	9	44	0

Table 7

The Flagship Universities Ranked According to Ratings of Perceived Influence on Higher Educational Decisions by Selected State Agencies and Institutional Governing Boards

Rank	*% of Total Influence*
By influence of Institutional Governing Board	
Minnesota	63
California	54
Hawaii	52*
Maryland	44
Wisconsin	44
Colorado	42
Illinois	37
Michigan	36

*If Hawaii had a coordinating board with the average influence such boards were rated as having in the other states studied, and that degree of influence (17%) was taken from its governing board, the U. of Hawaii would rank last, at 35%.

By influence of State Executive Budget Agency	
Hawaii	35
Maryland	33
Michigan	30
Illinois	29
California	24
Wisconsin	20
Colorado	13
Minnesota	6
By influence of Coordinating Board	
Illinois	28
Colorado	25
Wisconsin	21
Maryland	13
Minnesota	13
Michigan	11
California	7

(Not applicable to Hawaii)

By influence of Legislative Staffs	
Colorado	18
Michigan	16
California	11
Hawaii	10
Maryland	7
Minnesota	7
Illinois	5
Wisconsin	5
By influence of other state agencies	
Minnesota	17
Wisconsin	9
Michigan	7
Maryland	7
California	4
Colorado	3
Illinois	2
Hawaii	1

the interview data and documentary evidence were not always congruent with these assessments of respondents. For example, according to the data collected by the interviewers, the University of Hawaii's governing board would rank close to the bottom of the list in influence, and Michigan's would be somewhat higher. In California and Wisconsin, going by the data, the budget agencies would be moved up a rank or two. And if, as the footnote to Table 7 suggests, Hawaii had a coordinating board with average influence, that state's governing board would have lowest ranking.

4

STATE POLICY PROCESS AND INSTITUTIONAL RESPONSE

Chapter 2 discussed the major trends in the reorganization of state government and the consequent centralization of decisionmaking in the state executive offices to the detriment of legislative determinations of policy. The evidence provided in the previous chapters revealed something of the specifics employed by agencies of the political arms of government in the control of the universities, and the treatment of constitutionally based universities (CS) was differentiated from that given universities with purely statutory status (SS). In this section we turn to the more general relationships among the governor's office, the legislature, the coordinating board, and the university, and the consequences of their interactions for independent decisionmaking by the university.

THE GOVERNOR AND HIS OFFICES

Six of the states in our study have strong governor systems. The evidence from the influence questionnaire, discussed in the previous chapter, clearly differentiated between the two classes of states. In both Colorado and Minnesota (CS universities) the respondents indicated that legislative staffs have more influence than the governor's budget office. Perhaps even more significant was the finding that in both states the coordinating board was judged to have more influence than either the legislative or executive staffs. In the

other six states the minimum influence held by the governor's staff was 20 percent (Wisconsin), while the greatest amount of influence shown for a legislative staff was 6 percent (Michigan).

As states move toward a strong governorship, they emulate the federal government in creating conditions for executive leadership and responsibility. The governor not only molds public opinion, but also becomes the primary source of public policy, the supplier of funds to implement that policy, and the manager of the human and financial resources required to make the policy operative. Most bills in the legislature result from initiatives introduced by him or his administrative agencies, most tax increases are made on his recommendations, most new agencies and most new programs are established under his leadership, and most of the controls, regulations, and constraints applied to the management of state services emanate from his office. The strong right arm of his office is the state budget agency. From the budget office and associated agencies come the forecasts of income, expenditures, deficits, and surpluses which establish the financial parameters within which state policy is developed. To keep policy implementation within the confines of an agreed-upon operational framework, the budget office uses the variety of control techniques described in previous sections.

Singleness of Purpose

The governor has a very distinct and powerful advantage over the legislature and policy development because, as one university vice president pointed out, "The executive has a much more clearly defined philosophy towards higher education, which he doesn't hesitate to implement." That single attitudinal focus of the executive agencies of the government lends a persistent coherence to the many individual actions inherent in budget and policy development for the university. The governor can establish his priorities and pursue them with great perseverance. If the executive fails to achieve his objectives through one agency or by one technique, he can turn to others.

Professional Staffs

The governor in strong governor states (and this could almost be read as a tautology) has a much larger, more professionalized and

experienced staff than the legislative branch. The number of people utilized on a job largely determines the amount of detail with which they become concerned. Small staffs, if well trained, usually examine the larger policy issues, while large staffs can examine a considerable amount of detail. (The difference may be illustrated in California, where formerly the budget office assigned one man to the university budget, in contrast to the 20 auditors and several budget analysts now engaged in university reviews.)

At the time of this study, in 1971-1972, most of the problems of relationship between the universities and the state government arose primarily out of the governor's office. Although most of these offices are staffed by people with professional standards, habits, and outlooks, they nevertheless react to the political and policy priorities of the governor first and to their professionalism second. (Even at the federal level, the bureaucracy of the Office of Management and Budget has not yet become big, unwieldy, and independent enough to operate outside of the President's political control.)[22] Having presented evidence of how the budget and control processes operate on the universities, we turn to the supplemental ways in which the governor exercises his influence on the institutions.

Board Appointments

In most states, the governor appoints members to various boards and commissions authorized by legislation, and makes appointments to the state coordinating board and the governing boards of most universities. Persons who have worked with such board members find that over time the influence of the governor who appoints them gradually wanes, and the members become independent agents. Some appointees have been known to do so immediately after appointment. Thus the appointment power of the governor may seem limited in its ultimate influence. Yet in several of the states the terms of office of trustees are for only four or six years, and a governor may easily

[22]The development of tensions between the political and professional worlds has been cited as partial cause for the recent reorganization of the Bureau of the Budget. For example, see Schick (1971). The creation of the Domestic Council with budget policy responsibility can be seen, however, as an attempt by the President to maintain control over policy determination while letting management or administrative control rest with the Office of Management and Budget.

"control" the board in his first term of office. In Maryland, the terms of trustees have recently been reduced, and in California shorter terms are being considered for the specific purpose of bringing the boards under surer political leadership. In California, the university regents came under control of the governor briefly, partly because of the number of ex-officio politicians on the board and partly because of an extraordinary number of appointments for vacancies caused by death and retirement. The governor made a concerted attempt to gain this control (as well as over all other higher education boards in the state) in order to influence university policy, and he succeeded. The regents imposed a student tuition fee at his insistence, although no such fee for California residents had ever been imposed in the history of the state system of higher education. One university officer has said that the governor is now attempting to get the terms of the regents reduced from 16 years. He further stated, "There is no need to solve an issue in the political budget if you can do it at the board level." Perhaps the governor of Illinois was listening, for a respondent reported that he too was ". . . going to get control of every board of higher education in the state."

Because of what must clearly be regarded as a trend, a number of the university people interviewed (in Colorado, Illinois, and Michigan) strongly supported the system of electing trustees, in order to avoid gubernatorial control and to create an independently elected force which would support the university in the face of executive and legislative pressure (see below).

Study Commissions and Audits

Governors also influence university policy by creating special study commissions to investigate certain alleged abuses or vulnerable areas in university operations. In Maryland, where a recent reorganization merged over 200 separate boards and commissions into 11 departments with cabinet status, higher education was left untouched. The governor threatened to create a study commission to look at education governance and determine whether or not a single department should be established for all of education, as several states have recently done. In Michigan, the governor established a study commission to examine higher education, particularly faculty workload, perquisites, and salaries; student-faculty ratios; and other operational items which the legislature had been attempting to get at through an

appropriations rider. A governor's study, however, is less subject to constitutional challenge than legislative actions; as of this writing, the study is still in progress. In Minnesota, the governor and legislature cooperated in establishing a study commission to investigate governance and other university matters. Two of the above studies involve CS universities, while the third carries import for the autonomy act that protects the University of Maryland.

In addition to such commission studies, the governor may order analysts to the institutions to audit specific subjects. Studies by both auditors and commissions provide great leverage for the governor in focusing on problems of his concern. They also provide him a basis for action, ostensibly objective, although he appoints the commission or designates particular auditors and instructs them on their duties. Often the threat of a study provides sufficient leverage for the governor to achieve his objectives without actually conducting it.

Allotment of Funds

The governor's control of expenditures through the allotment process has been discussed. The Michigan governor, for example, can reduce appropriations whenever revenue anticipations fail to meet appropriations levels. In the late 1960s, by withholding budgetal funds for buildings, the governor was able to persuade the universities to allow the state to select architects for construction of state-funded buildings, and in 1970-71 the governor recovered 2.8 million dollars from the institutions. In Wisconsin, the governor withheld several million dollars of university administrative funds until the legislature approved his merger bill.

Veto Power

One of the governor's strongest, most effective powers is the veto. It is widely known that the President of the United States must veto a complete bill even when he may be disturbed by only one part of it. But it is less well known that this practice is common too among the states, and that some governors have other extraordinary veto powers. The new Illinois constitution followed California, Minnesota, and several other states by authorizing the governor to veto single-line items in bills and also to reduce the amount of any item in an appro-

priations bill. In strong governor states, the item veto is common, the item reduction power much less so. Obviously, the fewer the line-items in a university appropriation bill, the less opportunity the governor has for eliminating or selectively reducing it. Evidence has been reported that the number of items in appropriations bills are being increased. Ironically, legislatures favor separate line-items to insure that institutions respond to legislative intent; but the practice also augments the governor's power to use his discretionary veto.

Legislatures encounter difficulty in overriding a veto because it takes an extraordinary vote to do so. No override has occurred in California on any bill in the past 20 years (although the colleges and universities have tried on several occasions), and in Illinois, unless the single individual who was the principal sponsor of the original bill also sponsors the override action, the legislature is without power. Thus the Illinois governor needs only to stop a single individual to prevent an attempt at an override. In Maryland, the governor has little need for his veto, of course, since the legislature may not increase the amount for any item in the executive budget bill without increasing taxes.

Negotiated Agreements

When a governor is faced with a problem in a CS university, or a delicate political issue in one with SS, he may make public criticisms to focus attention on the matter, or he may try to negotiate a settlement of the issue without taking formal legal action. The University of Maryland appeared to negotiate with the governor to maintain its autonomy. One university office stated that, "We sometimes informally agree on certain things . . . minimum control really." The governor in California uses the negotiating device extensively. The university concurs in this, thereby maintaining its constitutional autonomy by avoiding possible legislative restrictions which, for diplomatic reasons, it may not wish to challenge in the courts. Utah lost its autonomy by acquiescing to legislative restrictions, while California acquiesces, but does so through an informal agreement with the governor. University officers assert that these self-enforcing agreements provide protection against potentially more destructive legislative impositions. Apparently in Michigan, the CS universities do not engage in extensive bargaining with the governor or even with the legislature. This may account for the numerous court challenges

initiated by the university against the state, many of which are won by the university regents. Despite this, Michigan's governing board was one of the lowest ranked in influence among all eight states. This raises the question of which alternative may be better: Can the university governing boards save more influence by negotiating than by court challenges?

THE LEGISLATURE AND ITS STAFFS

"People are no more discontented with the universities than they are with the legislature," stated a state budget director. The ascribed discontent with the legislative arm can partly be explained by the diffusion of leadership and the diverse philosophies that characterize most state lawmaking branches. Whereas the executive can pursue a single course of action aggressively, the legislators are not only divided into two parties, two houses, and numerous standing committees and special study groups, but they must accommodate to a substantial contingent of new members after each election. Notwithstanding divisions by party affiliation, however, each committee and each of the two houses exercises considerable power. Universities would have a formidable task indeed in meeting the demands of an appropriations committee and an education committee in each house and then a majority of members of each house if it were not so hard for legislators to agree among themselves. Even so, university officers spend many more hours testifying before legislative bodies than they do before state budget officials. (One CS university spent 68 days in testimony in a single legislative session.) Moreover, this dialogue held in open hearing establishes a different tone than the more informal intimate explorations made in the governor's office, and puts those who testify on the defensive, often over rather trivial matters of concern to a single legislator. The onus is on the university to satisfy the whims of every legislator, however parochial his interests.

Advantage Over Governor

The advantage the legislature has over the governor is the continuity of policy resulting from the seniority system, which allows committee members to become experts in their own right. Thus, two legislators in Michigan dominate most educational decisions and

through the rider make their concerns about university management definitive. While a governor can focus his effort during his tenure in office, that period is short compared to the tenure of some legislative leaders. On the other hand, few powerful legislative leaders have made or maintained their reputations by championing higher education. Historically, this area has had little political salience (Eulau and Quinley, 1970).

Staffing

While executive offices are usually (not always) staffed with professionals, many legislatures even today provide no staff for even the most important standing committees. Often, the number of staff dealing with higher education in legislatures seldom exceeds one or two persons, including those in the office of the legislative analyst. Moreover, these staff members usually have less training and experience than those in the governor's offices.

Diversity of Issues

The diffusion in philosophy and power relating to education leads to legislative concern about a great variety of issues. On most, the university can create countervailing opinion through its alumni or home district legislators. But because the thrusts are so varied, and the information and definitional base required to combat them almost infinite, the university has difficulty in maintaining its credibility. As one administrator puts it, "Every time they asked a question, we gave them an answer, but they thought we kept changing our minds."

Legal Attitudes

However legislatures may operate, they perform an important constitutional function. "The power lies with the legislature" primarily because it alone may tax and appropriate. Collectively, legislators are responsible for promoting and protecting the public interest. Consequently, they make little differentiation between the CS university and any other state agency when asking justification for use of state funds and for evidence that such funds are being spent wisely. By

requiring assurances that funds will be expended for high legislative priorities, legislators sometimes overstep the constitutional rights of the CS university, as they did in Michigan, and appear to have done in Minnesota and Colorado. But while the university in Michigan legally challenged legislative and executive actions, the universities in the other two states chose to look upon appropriations riders not as rigid demands, but as declarations of intent to be broadly interpreted and responded to with discretion and perhaps circumvention. Riders were considered "methods for telling us something"; "more like a resolution"; and "not to be interpreted literally."

Controls Over the University

When university officers voice such phrases, however, they ring only partially true. Each of the CS universities expects more riders and more attempts to circumscribe freedom to spend appropriated funds. Even before the favorable court decision in Michigan, university officials there felt that even victory would be a Pyrrhic one. Legislative intent is very clear. Lawmakers will take several types of action to assert greater control, or as one university administrator stated, "We have 42 institutions into which the legislature pours a lot of money so that controls over it will be exercised by your friends as well as critics." These controls take several forms.

Standing Committees

First, the legislature may set up a special standing committee for higher education, as it did in Hawaii and Illinois, divorcing it from the traditional committee that encompasses all education. These committees meet regularly to discuss and receive testimony on current issues. Their staffs organize the agendas, obtain witnesses and documents, and pursue the elusive details. Some of these committees and those on appropriations determinedly assess the degree to which the universities complied to previous riders or declarations of intent. Committees may eliminate or approve any item or reduce amounts in bills. To repeat: As one university administrator put it, "Whatever we fail to get this time is directly related to some failure to respond in the past."

Board of Regents' Terms Reduced

Secondly, as discussed earlier, the term of office of university regents was reduced in some states, and such action is being considered in others. Legislators do not look upon elected regents as their peers, nor do they feel comfortable with the added independence which elections gives trustees. Hence the threat of shortened terms, and thus more political control may bring about short-term compliance on some currently pressing issues. Nevertheless, it is the governor's power which increases when terms are reduced or trustees appointed instead of elected.

Threatening Bills

Thirdly, a not so subtle threat arises from introducing bills which would circumscribe the university. Often it is only a threat, or at most a declaration of discontent about some aspect of university practice. But universities are never sure of who is merely threatening and who is serious. If a bill appears to be inimical to its interests, administrators of both CS and SS universities make it a point to inform appropriate legislators, including the sponsor, that they oppose it. To do so appears to them to be a matter of courtesy, a way of not surprising a legislator or a committee. In the long run, such practice evidently also protects the integrity of the university. In Michigan, threats have been made to introduce bills to eliminate the CS of the universities. In California, some study commission is almost always looking into the matter of governance and CS. In Minnesota, the legislature took the initiative in establishing a study commission to look at the university and its control.

Performance Auditing

Fourthly, legislators now authorize the use of performance auditors. In some states this is merely an expansion of function of existing offices, but in others entirely new offices are established. Whatever the organization of the office, the legislature intends to use professional staffs to determine whether or not universities comply with line-items in the appropriations bills, with riders, and with the intent of legislative committees. Both auditors and analysts seek to

establish an information base to conduct studies very much as budget people do in the governor's office. In Hawaii, the auditor has been given broad powers to assess performance. In Maryland, the new legislative analyst is in his third year; in Michigan, both houses have their own fiscal analysts; and in Illinois, a new legislative fiscal office has been established. The audit offices are being staffed with professionally trained people, as are the expansions of the analysts' offices. Thus, this new condition was developing in each of the eight states studied, not in response to higher education problems only, but certainly expedited by the financial and other problems caused by the colleges and universities.

Legislative response in creating professionally staffed agencies under its direct control is as much a reaction to the growing power of the governor as to other causes. Several instances have been cited of the competition between the two political arms in the weak governor states (especially Colorado) and of how the higher institutions are caught between them. Whether the legislatures in the strong governor states can succeed in recapturing lost power and influence remains an open question, but there is no doubt that legislatures are making the attempt.

Program Budgeting

Program budgeting may be seen by legislators as another means by which their legislative auditors and analysts can evaluate performance at least as well as the governor's staff. However, when Wisconsin tried a form of program budgeting, it was reported that the legislature lost power to the governor. Generally, both governors and legislators get into the details of university operations through the budget. The difference between a knowing and sophisticated intervention and an amateurish one probably derives from the relative comprehensiveness and definitiveness of the information base available. With respect to information, the governor has the advantage over the legislature and perhaps over the universities as well, since he decides on the objectives, issues and guidelines, sets up the system and the program structure to be used, provides the forms for reporting, and indicates what analyses are to be performed. Moreover, his office has many agencies which can supervise and apply management control on a day-by-day basis. As a rule, legislatures neither have the time nor inclination to be that thorough about any matter, although certain

members wish they could be. As a body, many legislators are now seriously attempting to understand the university better, yet some members still seem resigned to a much different role. As one legislator said, "There's not a damn thing we can do about the university [CS] after we give it the money."

In reacting to the new legislative control efforts, a greater dilemma confronts the CS university than the SS university. The latter may need to play cat-and-mouse during the legislative sessions, but once they are ended the law applying to the university is fairly clear. In CS states, however, through the use of riders, resolutions, bills of particulars, and worksheets in lieu of legal mandates, the university can be caught up in disagreements between the governor and the legislature and among legislators, with no clear course of action open. Most CS university officials reported greater responsiveness to legislative desires than to those of the governors. ("They [governors] are only there a short time.") However, the growing number of line-items in university budgets and the governors' veto power may result in a reassessment of this stance. In conflicts among politicians, it is best not to be in the middle, for neither side can be entirely pleased and one side may be entirely alienated. Perhaps California's informal agreements with the governor will turn out to be the least detrimental to the university in the long run.

Legislators More Threatening than the Governor

Except in California, the CS universities were more threatened by the legislature than by the governor. Perhaps this is because governors cannot attach riders to appropriations, or because legislators feel more frustrated than governors for lack of general power, or are more sensitive to small or parochial voter constituencies than governors. While committee hearings offer every legislator a chance to question the university, substantive interventions derive from riders, bills of particulars, and worksheets of committees. Legislative influence largely derives from the university having to return at the end of each budget cycle to face the same committee chairmen and staff members who established the legislative intents the university was meant to interpret and fulfill. Repeatedly during the interviews, legislators and their staffs said that they would have to come back again next year.

That Colorado and Minnesota have weak governor systems and that in Michigan two legislators are very strong in education says a good deal about why the universities deal with the legislators in those states. California, the only really strong governor state with a CS university, provides the opposite example: The university bargains with the governor, not the legislature.

THE COORDINATING BOARD AND ITS STAFF

What is the role of the coordinating agency in the eight states under study? As one lieutenant governor said, only half facetiously, "If I ever find out, I'll tell you." The exact role of the coordinating board seemed ambiguous to those interviewed in every state, but when the same people responded to the questionnaire on influence in decisionmaking, the coordinating boards were reported to have more influence than legislative staffs, but less than the state budget staff. Indeed, as previously reported, two of the agencies were identified as having more influence than either the budget or legislative staffs, and a third was about equal. Hence, in some states the coordinating board or council now is a power, and its practical effects on the autonomy of institutional decisionmaking may be substantial.

Legal Authority

The coordinating agencies in the eight states vary greatly in their legal authority to control aspects of university operations. Michigan has the only coordinating board with constitutional status, but its legal power to coordinate has little meaning since each of the institutions has CS of its own. The Michigan board is also the board of education for the elementary and secondary schools, which limits the amount of attention it can pay to higher education. At the time of this study (summer 1971 to spring 1972), California, Maryland, and Minnesota's coordinating agencies had data gathering and advisory powers only. Wisconsin's council had control over programs and moderate powers over other matters, but its power was limited by the existence of separate commissions for scholarships and buildings, and the university's strong opposition to coordinating activities before 1971. The Colorado and Illinois agencies were most vested with legal authority, and both ranked high in judged influence.

The legal role of a coordinating board is important, but ultimately it gains its position by being useful to the arms of government and to the institutions.[23] Agencies without strong legal powers gain influence by service. What the executive and legislative branches want are ways to foster the optimal development of each institution and the state system at minimal cost. They see the planning studies and information bases of the coordinating agencies as most useful in reviewing budgets and new programs. The principal problem of coordinating agencies is that of reconciling their coordinative function with the autonomy of the institutions, especially those with CS.

Influence Roles

In the states with CS universities, the coordinating agencies showed much less influence, except in Colorado, than in SS states. This might be expected, considering that three of the four coordinating boards were statutory, while the institutions had CS. Thus, coordinating agencies in these states have more difficult obstacles to overcome than the legislature and executive, who have constitutional powers as well as a political base.

According to the opinion survey, Minnesota's board of regents was adjudged to have the highest amount of influence, but the advisory board was thought to have more influence than either the legislature or executive staffs. This large degree of influence was gained, in large part, because the university began cooperating with the coordinating staff on matters from which the university might benefit. It voluntarily began submitting its new programs for review and approval by the agency, mostly, perhaps, so that the agency would exercise negative control over new graduate programs developed by the statutory state college system. But the university also began to see the necessity for furnishing information to the state, using common definitions and reporting practices along with the other institutions. The logical and practical medium to do this was through the coordinating board. While the constitutional university had entered into these activities voluntarily, the legislature in 1971 empowered the coordi-

[23] A separately elected board, such as the one in Michigan, is unlikely to gain great influence because its own constitutional status puts it in a competitive position with the executive and legislative branches, as well as with the CS institutions themselves.

nating agency to ask for the information and cooperation that had formerly been rendered to it on a voluntary basis. Will the university by complying under this new legal authority be vulnerable to the same kind of court decision which ended effective CS status in Utah?

In Michigan, despite the coordinating board's lack of specific legal power to implement or force coordination, the big universities began to submit programs for review for much the same reasons as in Minnesota, and this appeared to be effective. The developing Michigan state college-universities were running into obstacles in getting board approval of their new programs, which the budget agency would not fund until approval had been obtained from the coordinating agency. In California and Colorado the university also submits its new programs (currently primarily in graduate and professional areas) with the same goal in mind. Thus the coordinating boards serve the CS universities in preserving their program integrity.

The coordinating agency in Colorado has gained the influence it has (second only to Illinois, which has no CS university) by an aggressive program of data collection, studies and analyses based upon such data, and long-range planning. And the University of Colorado, despite its constitutional privilege to respond to coordinating board requests for information only to the extent that it wishes to, nevertheless finds it politically inexpedient to withhold data. The other state institutions comply with coordinators' requests, since they must by statute, and for the university alone to attempt to remain aloof from participating in coordinating activities would test the credibility of the executive and legislative arms. The coordinating council's aggressive style of operation in Colorado has made it more influential in state policymaking for higher education than the staffs of the political arms. The council fills a vacuum created by the mutual lack of confidence of the political arms in that state; neither trusts the other to furnish either information or policy alternatives.

The establishment of higher education information systems may be the means by which the coordinating agencies in the other three CS states could achieve influence independent of the wishes of the CS university. CS does not exempt the university from having to furnish sufficient information to the state so that the political arms may determine the appropriate level of state funding. Moreover, the institutions may be much more amenable to furnishing information to a coordinating agency which can analyze it objectively without strong political commitments. Usually a coordinating board uses information more for long-range planning than for immediate decisionmaking

(with the possible exception of new program approval). Although the Michigan court case of 1972 went against the political arms of the state, the court held that the universities must furnish whatever information the state desired.[24] With information carefully and fully analyzed, it seems quite probable that the agency which designs the system, gathers the data, and provides the analyses for the state as a whole will have considerable influence on decisionmaking. (If two or more agencies begin to compete for this function, the total effectiveness for the state is likely to be diminished and institutions overworked to furnish two or more data bases.)

The CS universities have been far more wary about cooperating with coordinating boards on budget and finance matters than on new programs or basic information systems. In California, the coordinating council is legally to "comment on the general level of support sought," but the university has insisted that the phrase be very strictly interpreted (both the executive budget agency and legislative analyst provide thorough reviews). In Michigan and Minnesota the agencies stay out of budget matters almost entirely.

The coordinating agencies in states whose universities have only SS have equal legal status with the universities. If a new law authorizes new power, the institutions have no alternative but to comply. Nevertheless, the characteristics that distinguish the Colorado agency are the same ones that make a coordinating board a powerful influence in other states. The agencies with aggressive styles in setting up information systems, doing significant studies for policy consideration, and engaging in long-range planning accrue the most influence. The Illinois board for coordination typifies this mode of operation even more than Colorado's board. On the opposite extreme, Maryland's council, with only advisory powers, has played a very cautious and slowly evolving role. It has done several special studies which have influenced decisions of the legislature and governor, and it began a

[24] As quoted in Glenny & Dalglish (1973): "In order for the legislature to properly exercise its power to appropriate state funds, it must necessarily possess some authority relating to the flow of pertinent information from the plaintiffs [The Regents of the University of Michigan] concerning their needs and finances. It is the opinion of the court that the determination of how certain items shall be reported by the plaintiffs in making their budget requests, and the determination of which sums shall be considered as deductions in computing the amount to be appropriated to the plaintiffs' institutions are matters well within the legislature's authority to appropriate state funds." [The Regents of the University of Michigan vs. The State of Michigan, State of Michigan, Circuit Court for the County of Ingham, 1971, p. 14.]

review of programs to which the university voluntarily complied, although under its autonomy act it might not have been legally required to do so. Even with this nonaggressive stance, however, the council is slowly gaining influence, according to the majority of those interviewed. Its studies are used, and its professional opinion is sought by the governor and the legislature before political action is taken on new programs, tuitions, enrollment ceilings, and other matters.

Staffing

Not unlike the state budget agencies and offices of the legislature, the coordinating boards have difficulty in obtaining the services of well-trained professionals. Insofar as a board lacks a staff with experience, training, and sophistication, it will be looked upon by the universities, with their highly professionalized support personnel, as unfit to perform all but the most elementary tasks. Mention of their lack of high quality was the most often heard criticism of coordinating agency and of legislative staffs. Despite the fact that better staff means more effective operations in relation to the universities (both CS and SS), the administrators seemed more willing to cooperate in coordination only if assured of staff that would be less capricious, more capable of attacking fundamental problems, and less given to generating great effort on trivial or isolated activities.

Relationship to the Political Arms

There is also considerable ambiguity in the relationship of the coordinating agency to the two political arms of government. Legally speaking, the agencies are part of the executive branch of government, yet they have a special status, just as higher education generally has had, and the agencies stand between the government and the institutions. They are much like regulatory commissions; their specialty is higher education. In consequence, the state budget staff has misgivings about the coordinating agency's encroachment on the budgetary role. Legislative staffs find it more difficult to focus on assessing individual programs and budget items when what the institution proposes is part of a long-range master plan and/or is supported by a considerable amount of data and study from the coordinating board. Several CS university officers indicated that they sought approval of the new

programs by the coordinating council so that they would have "an objective voice" supporting them in the political approval process.

Regardless of how state staffs regard them, the legislators as individuals and the governor in his political capacity seem well disposed toward coordinating agencies. It is an information source for them that they would not otherwise have, and information in this case is influence. Even though both the legislature and governor have cooperated in authorizing the agency, once in operation the legislature realizes that it has given away some of its decisionmaking capability, while the governor sees it as an ally in budgetmaking and budget control. The tendency is for the coordinating boards to affiliate most closely with the governor and his offices.[25] The agencies may develop, in conjunction with the governor's budget staff, the complex formulas and program review processes that ultimately can frustrate the individual legislator who has an axe to grind or a parochial objective to exploit. The program review and planning processes of the coordinating board, along with the budget formulation of the executive budget staff, often leave the legislature with no option but to review for final approval. The criticism of legislators have often been anticipated and overcome with argumentation based on the coordinating board's plans and hard data.

Added Power

Coordinating boards across the nation are being authorized new or extended powers by almost every session of the legislature.[26] In 1972 both Maryland and Minnesota removed their boards' purely advisory status by passing new statutory requirements that all proposed programs be approved by them. The Colorado board was also strengthened.

[25] Berdahl (1971), Glenny (1959), and Millett (1970), have all reported this.

[26] Education Commission of the States. *Higher education in the state*, July 1972. Each year in the July issue the Commission summarizes the reports of the members of the State Higher Education Executive Officers Association (SHEEO) on major legislative action affecting postsecondary education in their states. In 1972, twenty-three states revised the powers of their control of state boards for higher education.

Study commissions in three states with CS universities (Michigan, California, Minnesota), and one with an SS university (Maryland) have been charged to give particular attention to governance and coordinating structures. Significantly, all of these special studies by ad hoc gubernatorial and legislative commissions are in the states which the opinion survey showed have the most autonomous universities. Coordinating boards, if they engage in substantive long-range planning, appear to ward off these special commissions.[27] On the other hand, if the coordinating agencies have a great deal of power, the governing boards of the institutions are viewed as having less.

Comments from state officials themselves serve to pinpoint the central issue. The remarks quoted below came from different states:

"Coordinating agencies are saving the necks of higher institutions—most presidents don't realize this."

"The legislature has an appetite, but can't get to the food because of the coordinating board."

"Institutions resist expansion of powers of the coordinating board, but they could get in worse trouble with the budget office."

Thus, both CS and SS universities have to assess who is to exercise the most influence over them; in part at least, it is their choice.

THE UNIVERSITY ROLE

The university, whether of constitutional or statutory status, engages in a variety of ploys, tactics, stratagems, and power plays to gain its objectives with the state government. Often it aggressively asserts its legal status, displays its national prestige, rallies the alumni in and out of the legislature, cries havoc about state interference, and otherwise reports itself with sheer power tactics. On the other hand, the university may compromise, cooperate, discuss, bargain, cajole, and conciliate in order to protect or gain an interest. At one time or another, most universities employ all these means, depending upon the circumstances and objectives. But they do differ.

[27] An in-house task force at the University of Missouri recently reached a similar conclusion and recommended to the president that the university support strengthened state coordination. The report also makes an assessment of the effectiveness of various coordinative structures and function in several other states. See *The report to the President of the University of Missouri*, July 1972.

Institutional behavior can be classified along a spectrum from asserting autonomy in open, direct, and often challenging ways at one end to playing down real independence in order to appear obeisant to state interests on the other. Where in the spectrum the university falls may be less related to the degree of legal autonomy it enjoys than to the trust and confidence the public has in the university as an institution. Real autonomy may be far less a legal proposition than a social one. The university, in responding to its environment, reveals through particular types of actions the assessment of its social position. If public trust is high, the university reacts with confident aggressiveness to impositions of the political bodies. Insofar as that trust becomes impaired, the university moves toward more cooperativeness with politicians.

Beyond its own social status and direct relationship with state government, the university may be positively or negatively affected by what other state colleges and universities do. Institutions may protect each other's interests, give institutional administration a bad name, or otherwise so affect one another's relationships with state government that the legal status and reputation of one becomes significant in defining the response of government toward the others.

The following sections elaborate on some of the principal elements in these relationships.

Use of Autonomy in Responding to State Government

Universities with CS utilize their special legal position in defense of institutional autonomy. Several persons interviewed observed that the university was more inclined to stand in defense of its academic prerogatives if it possessed constitutional status. Yet, it was clear that large universities without such status also were left pretty much alone in academic matters; independence under the constitution was more useful in freeing the university from certain management controls by the state than in academic areas, where they were likely to be free anyhow. Even the management controls seemed at times to be more of a nuisance to administrators than a substantive interference in the central academic function of the university. There is some suggestion that in reality the only people who know or care about CS are state and university officials, administrators, and legislators. Faculty and students seldom see themselves affected, and the general public by and large is unaware of the university's legal status.

An important advantage in having CS is the leverage it gives the university. Lacking financial self-sufficiency, the university may need to exercise any accouterments of power it can bring to its support. Prestige and distinction are helpful, as are demonstrations of the extent to which the university meets the needs of the state, or of powerful interests in the state.

As a bargaining tool or lever, CS appears to be most useful with the legislature. The deterrent effect of the legal status on proposed legislation was often commented upon; legislators may be uncertain whether or not a proposal that will affect the university can legally be made. Such uncertainty, particularly if exploited by the institution, can lead to a withdrawal of the bill, and several university officials observed that as a consequence they spend little time in defeating undesired legislation. This does not mean, however, that the legislature cannot or will not attempt controls through the budget or through other means, such as expressions of "legislative intent." In one state with a CS university, a legislative committee set forth certain objectives it wanted the university to achieve. Similar letters to the state colleges resulted in promises to comply. The university officials, on the other hand, thanked the committee for its concerns and indicated consideration would be given to them as the university made its decisions. The university officials, by responding almost as if they would ignore the "bill of particulars," affirmed the legal status of the university, but intended in fact to comply closely with the legislative demands.

The style of relationships between CS universities and state government often consists of a series of negotiations and bargains. Deals are struck, leverage is applied, diplomacy and tact are used, and so on. One CS university departed very slowly and cautiously from legislative "intent" expressed during hearings on appropriations and "proceeded by negotiation." SS institutions in the same state had little or no ground for "negotiations." As previously noted, the CS universities in three states submitted proposals of new programs to their coordinating agencies to gain the agencies' support for their funding.

Threatening legislative bills have sometimes been countered by a suggestion by university officers that if the legislature would pass a resolution (which does not have the force of law), the university would agree to abide by the legislative intent the resolution expresses. The basis of such a relationship is almost contractual, and the CS university preserves its legal status.

Bargaining, of course, is not limited to CS institutions. They are, however, in a better legal position to negotiate than institutions with merely SS. The University of California utilizes the oral contractual or treaty approach. For example, a university official reported the institution to be negotiating an "agreement" about what information would be reported to state government officials. The contractual approach gives the appearance of permitting the university to retain its autonomy as a free and equal party to the contract. The fact is that the university has but little choice but to enter into an agreement of some sort or other. The University of Michigan, with a heavily litigated CS, appeared ready to test its position in the court, rather than engage in the "contracting." Of course it takes two parties to contract. If the state government (governor or legislature) is unwilling to make accommodations with the university, as appeared to be the case in Michigan, little choice is left the university: It can sue to assert its status or accept legislative requirements and run the risk of beginning a pattern of acquiescence.

An alternative to the contract and the litigation approach is to imply "yes" and do "no." This response rests on the assumption that a large, distinguished CS university with an international reputation can seldom be made to do anything it doesn't want to do. The university, within obvious limits, may permit what appears to be an interference with its CS to be inserted in its appropriations bill (e.g., a requirement that all faculty teach a certain number of hours each week) and then do little to carry out the legislative "mandate." Given the size and complexity of the university, the legislature then finds it almost impossible to police the situation satisfactorily.

All institutions, not just those with CS, engage in the mixed strategies described. CS universities, however, have status as an important and valuable weapon in the university's arsenal. Indeed, one official spoke of it as a weapon which, if not employed frequently, may be most helpful to a university, but which, if resorted to frequently, loses its effectiveness. When and on what subjects to take a stand becomes a crucial question.

The question is, which intrusions of state government can be "lived with"? The rhetoric used suggests that fundamentally the strategy the university is forced to take when it is not confident of general societal support is defensive. It is also an uncertain strategy; since outcomes are not predictable, the strategy is conservative as well as defensive. Because the involvements of the university and state government are many, it follows that a great many showdowns are

avoided. Contributing to the calculations are the possibility, for example, that what can be lived with today may be a function of the personalities involved or of certain structures that may be gone tomorrow. Legally, a CS university probably cannot comply to legislative blandishments often and still maintain its status. Having once "lived with" something, it may find its CS at least as previously defined, impaired or even destroyed rather than preserved. If the state cannot take away CS, why does the university decide to "live with" (for example) conditions inserted in appropriations bills? Why doesn't it challenge the condition? Many interviewees stated that litigation instituted by the university to challenge a legislative directive would be tactically unwise, certain to offend legislative sentiments, and if won by the university would be a hollow victory. There were others who believed litigation is just an extension of university lobbying tactics. The amount of influence attributed by respondents to the University of Michigan board of regents, which has most consistently resorted to court challenges of the state, was much less than the influence attributed to the universities in California and Minnesota, where such challenges are rare.

The Source of Autonomy

Although the conferral of CS is generally considered the most effective single legal device by which to assure the university a measure of autonomy, it is not the only device and, in practice, may not be the most important one. The priority given higher education, for example, relative to that given other social needs, such as health or welfare, and the priority given to it when the nation is at war or peace conditions the effect of CS. The immediate milieu in which the university is situated, and the attitude of the people in a state toward its colleges and universities and higher education in general can all be significant in gauging a particular institution's degree of autonomy. As one CS university president emphasized, the public confidence in the university, and the tradition of higher education in the state is almost as important as CS in securing autonomy. A former president of the same university noted that the status of the university under the constitution had the effect of creating a "public expectation" that the university would be autonomous.

The general undercurrent of public support for the university may be encouraged by CS, but also to be considered are such factors

as the prestige and excellence of the university, its size, its reputation, and in some cases its tradition of serving the people in the state as, for instance, by providing agricultural extension services in a state which is largely agricultural. These are matters over which the university has at least some minimal control. CS in itself may be unimportant.

If the milieu and public attitudes change, the university may be seriously affected. One university historically enjoyed a high degree of rapport with the mainly rural population in the state through its agricultural extension programs and services, but was said to have fallen into disfavor when the population balance shifted to the urban areas.

The university's autonomy, then, is dependent on a host of public attitudes and perceptions over which it may have only indirect control. Even then, there is some question as to cause and effect. Does the university, for example, have autonomy because of its excellence or prestige, or does it owe its academic reputation to its autonomous character? Only one person of the many we interviewed volunteered the opinion that the university improved in quality as a result of being accorded legal autonomy. Moreover, most university officials would agree with the one who declared that "the regents can't run the university without observing custom, even though the board is constitutionally autonomous."

A major university may isolate itself from its community and its potential supporters. One state official reported advice he frequently gave university officials. "When a university fences the world out," he advised, "it also fences itself in." A large state university oriented towards a national or international community of scholars, with a reputation for conducting sophisticated research, may be out of touch with the people in the state who might prefer an institution they can understand, and whose research or services more directly serve their needs. This remoteness was often commented upon by non-university people, in direct contrast to comments about state colleges, which were considered to be closer to the people and in relative favor with the legislature.

Nevertheless, a fundamental shift is taking place in public attitudes toward higher education which affects all institutions alike, regardless of type and of whether or not they possess CS. The popular press has referred to the public frame of mind as the new populism. Whatever the label, a wholesale re-evaluation is going on in people's opinions about the value of higher education. Distinctions between institutions (colleges and universities, large and small, constitutionally

autonomous or merely statutory) are becoming blurred. This change carries with it an implicit criticism of higher education. Funds are scarce. Many see waste, duplication, and excess in higher education. Not only are there higher priorities than postsecondary education, but even within that level the shift is in the direction of the "people's institutions," such as community colleges, vocational-technical training, arts and crafts, and the like.

Collective bargaining and highly rationalized budgeting techniques are contributing toward engaging public input and the public's capacity to influence institutional decisions, largely by shifting the locus of decisionmaking from the institution to one or more agencies of state government, thereby involving large numbers of individuals. Only part of the shift in public attitude can be attributed to a taxpayers' revolt, and only part to concern about faculty teaching. Perhaps more important are suspicions that not everyone benefits from college and that institutions engage in self-aggrandizement. There is more to one state official's question, "Why should Oshkosh have an Olympic swimming pool?" than a simple desire to save state money.

Many institutional officials reflected that populist sentiment will damage the university through lack of understanding of its historic role and mission. Society's questioning and reexamination might result, they seem to fear, in a reordering of priorities and status alignments. The impression is that the orientation of those outside higher education is basically anti-intellectual.

Whether or not independence is enhanced by a shift of public attention away from the university, it remains the case, as one former governor reported, that "the most threatening general thing affecting higher education is the state of mind of the voters, the people. They are dissatisfied. Politicians will prey on their dissatisfactions." One state budget analyst confirmed this when he said, "Higher education is a good place to cut the budget these days. You don't get all the negative feedback you might get elsewhere."

Ironically, as attention of politicians and bureaucrats focuses on such matters as health or environmental protection, the shift of attention from higher education towards other policy priorities may mean more rather than less autonomy for the university. If a bureaucracy has been created, however—a coordinating board, budget bureau, planning and construction agency, or legislative analyst—and has staff assigned to deal with higher education, the autonomy a university gains from being out of the limelight is likely to be negated; bureaucracies tend to assert controls.

The disaffection with higher education noted by a number of those interviewed collides with a tendency by some universities and/or their representatives to appear arrogant in their relations with the public and with state government and legislative officials. One university president commented that institutions with CS may be more arrogant than those with merely SS, the latter more or less continuously required to attend to legislative sentiments and directives, the former deeming themselves possessed of a more lofty position. There was by no means universal agreement on this point, and the study findings only partially confirmed such a view. A CS official was reported to have alienated legislators at a budget hearing by straightaway reminding them of the institution's autonomous character and the inability of ordinary legislative mandates to reach it. Another officer said, "We're very arrogant and that, in itself, has hurt us with people on the outside. The intellectual arrogance of the university has also caused us problems with the legislature." The president of this university was reported to have arrived at legislative hearings in a chauffer-driven automobile. Another CS university requested so much money in a year when the state economy was in serious trouble that a credibility gap resulted. "You expect us to believe that," was the reported legislative reaction. "It's like waving a red flag."

A vice president of another CS university remarked offhandedly that "constitutional status is synonymous with constitutional arrogance. We've been paternalistic. We're the only PhD-granting institution in the state, and we're the largest. Yet there are some things a college or community college can do a lot better than we."

This remark suggests that the so-called arrogance of a university can derive as much from the relative status or prestige of the institution as from CS. "Most great universities tend to be arrogant anyway," remarked a vice president, "and constitutional status does not affect the coefficient of arrogance."

Other persons interviewed suggested that "arrogance" was not so much an institutional affliction as a matter of personal style on the part of the president and his chief administrators. The resentment of the mandarin style was often personal rather than institutional. As a style,[28] it may impress on occasions and it may obtain for the university a respect or a regard that is instrumental in obtaining more funds

[28]Both Machiavelli (*The Prince*) and Mosca (*The Ruling Class*) recommend this style as desirable for strong despotic leaders.

for the institution or in intimidating uninformed opposition to university plans. Contrarily, it may also lead legislators and state officials, who often proceed out of a genuine high regard and concern for the welfare of the institution, to begin talking about cutting the university back to size. A number of state officials resented the univesity's stance of having a special status and referred to it as "just another state agency" or designed simply "to perform a staff function" for the state. It is not always easy to tell when the intent of state officials and legislators is benevolent or retributive when they talk this way. Frustration does clearly arise, however, when the university counters such expressions by standing on the principle of autonomy. "How do you make those people listen?" asked one state official. One highly placed CS university official implied the answer by attributing the passage of a state collective bargaining law, held by the courts to be applicable to his university, to the earlier refusal of the "snooty university, out of touch with reality, to negotiate with the employees who keep the place running." Thus, in the interests of a principle deemed higher than university autonomy, the state asserts controls.

Legislative and executive controls or attempts to control spring from a variety of motivations and reflect diverse interests. The wish to control may stem from distrust of what the university does and how it does it, and from the institution's remoteness as a function of its size and reputation, because of constitutional uniqueness. Because controls, as a rule, are applied to management practices, and not often to programs within the institutions, the state may fail to deal with the root sources of its distrust. Controls, however ineffectual in the short run, may have long-run consequences. For example, information systems and budget and management techniques may be instituted and grow increasingly sophisticated. A CS university vice president declared, "I've given up. I don't think we'll be restored to our old autonomous capacity until we get direct federal supports." All universities feel to some extent the pressures of these new techniques and the subtle priorities they tend to assert. The previous internal autonomy enjoyed by the universities and exercised on behalf of institutional priorities disappears as new state priorities surface. What is considered "waste" often is money spent on a program or in behalf of a principle that no longer holds high priority for the larger society. The state, in its judgment, moves in with "controls" to reorder priorities, to improve higher education, not to destroy it. In the name of democratic morality such as this, the issue of university autonomy

may seem a little hollow. The question becomes, "Autonomy for what and for whom?"[29]

Nevertheless, the tradition of autonomy is not likely to disappear. It is, after all, centuries old and has weathered many governmental storms. A lieutenant governor stated that, "What's written in the law is important, but tradition is too, and here there is a deep-seated tradition to keep education on one side and civil authorities on the other."

So, in speaking about the autonomy of the university, the governmental controls, the general milieu in the state, the attitudes of its people and elected and appointed officials, together with the style of the university and its officials, cannot be ignored. CS alone does not account for the relative autonomy any university enjoys.

Autonomy and Control of Governing Boards

The manner of selection and composition of the university's governing board may have important effects on the institution's autonomy and the extent to which its special legal status is defended. Election of regents, as is the practice in Colorado, Michigan, Minnesota, and Illinois, for example, was often considered instrumental in achieving for those universities a special measure of freedom from political intervention. While it puts university policy on the firing line each time elections are held, the process provides an outlet for the expression of public opinion towards the university which might otherwise be channeled through the legislature or governor, perhaps with more serious implications for the operations of the institution. One president spoke of elections as an opportunity to tell the university's story to the public, and commented that campaign funds from alumni are generally available to protect the university from the more "irresponsible" candidates and to support board candidates friendly to the institution. In Illinois, the alumni play an active role in selecting the nominees, and many persons inside and outside the state spoke favorably of this manner of selecting nominees.

A "super status" appears to go with an elected board. A university with CS can be reconstituted only by the people through a change in the constitution. The election of regents evidently reinforces

[29]For a number of dimensions of the problem not commonly considered by leaders of higher institutions, see Glenny (1970).

the university's primary accountability to the people, not to either the legislature or the governor. That at least is the theory which was given some weight in the course of this investigation.

A counter-argument stresses the importance of a board composed of people with "real influence" in the state, lacking which the board would be ineffectual. The electoral process yields no guarantee that persons of "real influence" (e.g., bank presidents, corporate leaders, men of wealth, standing, culture, etc.) will be elected, or even will run. This side favors gubernatorial appointments, with state senate confirmation. One state senator favored gubernatorial appointments for a different reason. By giving the governor regental appointments, he reasoned, you give the governor a sandbox to play in and prevent him from making a direct assault on the university.

Whatever the manner of selection, by election or appointment, just how effective the regents are in defending constitutional status and the university's autonomy is problematic. Much depends on how they are regarded by the legislature and the governor. Elected regents, we were told on several occasions, are not perceived by legislators as equals, despite the fact that they are elected statewide and have a statewide constituency, and customarily receive many more votes than individual legislators. On the other hand, elected regents tend to think of themselves as more powerful than legislators.

In terms of establishing state controls over policy at a university with constitutional status, there is no way to calculate which is more effective—conditioned appropriations by the legislature or appointments of regents by a governor. The power of the regents alone is contingent to some extent on legislative and executive largesse. A former president of a university whose governing body (except for ex officio members) was appointed by the governor, tried to describe the alternatives: "If you have the right kind of governor, it's great. If you have the right kind of board and the wrong governor, it's still okay. But if you have a bad governor and a bad board, there's trouble."

Clearly, a board can act as an agent for governmental interests, impair the autonomy of the institution, fail to defend or utilize its constitutional status, and in substantive terms act antithetically to academic values. On the other hand, a strong board can neutralize legislative interference and help persuade the public that the university is in good hands, thus undercutting the tendency of the public to press the legislature into asserting controls over the university. In Wisconsin

(SS), one observer stated that a consequence of regents' study committees dealing with such problems as student unrest and funding, testifying before the legislature, and generally creating the impression of regental responsibility, there was some feeling that legislators had lost interest in running the institution. However, within weeks after this statement was made, the legislature adopted the governor's proposal to merge the university with the state university systems, although the university regents opposed the action. That merger places in perspective any judgment that exclusive or final powers are possessed by a board of regents of a SS institution.

An official of the CS University of California reported that the tradition of control by the regents was so strong that the public does not routinely go to the legislature with problems about the university (as is the custom with matters related to the state colleges, with which the legislature has traditionally involved itself). He did not say, but could have, that notwithstanding the "strong tradition" of regental control, complaints about the university were taken to the governor. Indeed, it may have been the "strong tradition" which caused the people to elect a governor who promised to do something about the university. In California, the university negotiates with the governor rather than the legislature, and the regents continue to assume that their traditional powers are protected.

Effects of the Constitutional University on Other State Institutions

CS is normally thought to be limited in its effects and value to the institution possessed of it. It has impact on other institutions in the same state not so endowed, however, and indeed on all of higher education. Whether the effects are wholly a function of legal status or of size and prestige is not always clear. In any case, the perceptions of state government officials are largely instrumental in operationalizing the carryover effects.

The Model

Universities with CS are often seen as models or ideals for other institutions to emulate. Even if the other institutions are unsuccessful in achieving the same legal status, the autonomy enjoyed by the select few is frequently pointed to as the desired norm. Compari-

sons are not always rational or empirical; there is a considerable mythology attached to CS which is negotiable. So when opportunities arise, institutions without such status often seek it, or refer to it and its advantages in attempting to secure for themselves a greater measure of autonomy.

Private institutions, with their own tradition of autonomy, also serve as models for public institutions. For example, the autonomy of Johns Hopkins University appears to have influenced how the state government treats the University of Maryland. The constitutional status of the University of Michigan obtained in 1850 was based on an earlier legislative report (1840) commenting on the autonomy of private eastern schools and the improvement in quality that attended autonomy. In turn, the Michigan provision became the model not only for its own state institutions, but for those as far away as California and Utah.

The Umbrella Effect

The umbrella effect of CS universities often creates an ambiguity for state legislators and executives about whether a contemplated state control can really reach a university with such status. Because as a practical matter it is useful for state government to treat institutions of higher education as equally as possible (e.g., in the development of forms, practices and procedures, decisionmaking criteria), the tendency, remarked on by several officials, is for the contemplated control not to be asserted at all when there is doubt. If the control cannot be made to apply to all institutions, it is applied to none.

The umbrella effect may partly derive from the tendency of institutions to imitate each other or to use institutions with more prestige and power as models. Parity is a compelling principle. State colleges point to the larger universities in the state (whether or not they have CS) and demand equal faculty salaries and workloads, comparable buildings, comparable budgets. With respect to controls, one attorney for a CS university observed, "The other institutions tend to run around and hide behind us." In one state, a university official remarked that the academic freedom enjoyed by faculty at his CS university had definitely served as a model for trustees at the state colleges eager to equate their faculty with university faculty.

The Lightning Rod Effect

Not all comparisions bring favorable results. The isolation that sometimes accompanies the possession of CS and/or the position of being the only large university in the state can be disadvantageous either to the institution alone or to all institutions in the state. A university may act as a lightning rod for the other institutions by drawing the fire and receiving the major attention of the press, the public, and politicians. It thus shields the other institutions from limelight and fame, and also from criticism, thus enhancing their freedom to act. Legislative distrust of the large state university, as a result of campus disorders in one state, led to a singling out of that institution for special legislative attention. Despite regental efforts to demonstrate their control of the institution, state government perceived management as incompetent. The relative quiet on other campuses in the same state was perceived as evidence of good management.

Regents' claims of omnipotence may lead to their receiving exclusive blame for disorders or mismanagement, and elicit particularly strong corrective measures from state government. The problems at a large university may be so inflammatory or controversial that all the institutions in that state are similarly treated with respect to personnel procedures and post appropriation controls. Some states impose statutes to deal with student disorders which apply uniformly to all institutions. Even if a CS university should not be embraced within the terms of such statutes, as a matter of practice it sees advantages in not deviating too much from the standard. There is, after all, political safety in numbers.

The Leveling Effect

The leveling effect is the obverse of the umbrella effect. Several university officials mentioned their concern over administrative practices at the state colleges or community colleges. Mismanagement or unwise decisions in these institutions were perceived as affecting the state's attitude towards the major university, leaving it vulnerable to action by state government. Some university officials expressed a lack of faith in the capability of other state institutions to be well managed. In one state, salaries for community college administrators were reported to have "gone through the roof," a situation which led to legislative and executive inquiry about salaries at the

university. Ironically, while other institutions are jealous of the status of the CS university, in any battle with the state government that threatens the impairment of that CS, the university expects and usually receives the support of the SS institutions.

Extension of Constitutional Status to Other Institutions

The extension of CS to all state institutions may not be as advantageous as is usually assumed. There seems to be some value in having institutions with different legal status in the same state; it is more likely to lead to competition, innovation, and diversity. Moreover, the state government finds it difficult to deal uniformly with all institutions; state bureaucracies are thus forced to deal with variety, and while there is a risk that the actions of one institution may create difficulties for others, that risk is always present. With diversity in legal status, state controls, if asserted at all, tend accordingly to take into account the unique character of each type of institution.

In Michigan in 1963, all the universities were accorded the CS previously possessed only by "the big three"—the University of Michigan, Michigan State University, and Wayne State University. One of those university officials remarked, "Now that everyone is under the tent and everyone has the same legal status, the legislature and state government treat us all like state teachers colleges." Such comments reinforce the impression that there is an aura of prestige, privilege, and status that goes along with the protection and autonomy that CS provides. The older universities, accustomed to and jealous of their privileged position, appear to have lost something in the transition. One official asserted that universities with newly-conferred CS simply do not know how to be autonomous, that they have had no tradition of autonomy, and don't know what it means. Another official noted that the newer additions to the fold had administrative structures and procedures geared to the old way of doing things, and had not prepared themselves to assert their new status, thus threatening the original CS institutions.

There may be some validity to these observations. An institution that was once a state normal school or teachers college has a tradition that is less autonomous and less liberal than the major university. From the perspective of these emerging institutions, however, there is no question as to the desirability of having CS. Officials exulted over their new freedom to shift funds around internally: "We

don't have some guy sitting up there in a bureaucratic office telling us this or that can't be done," was a typical remark. Grateful for the freedoms they could now exercise, none of these officials was in a mood to challenge other less obvious and possibly more fundamental incursions on autonomy.

The situation in Michigan is unique. No other state has so many institutions with CS. The officials of the older CS universities, more accustomed to the status, probably correctly estimate that the extension to many institutions of what once was a unique legal position has damaged their claims for special treatment. Much of the "damage" has to do, however, with such matters as status and prestige. True, the state government now tends toward more uniform treatment of all universities, but that might have resulted, as in other states, from the sheer growth of higher education and the development of more sophisticated control techniques and fiscal constraints. Further, at the time the newer universities received CS, other amendments were made to the constitution, such as that giving the auditor general new powers to inspect the accounts of the older universities. Also, the coordinating board (the state board of education) was given CS with a deliberately ambiguous charge to plan and coordinate higher education without impairing the constitutional powers of the institutions. The result is little coordination. All institutions are so autonomous that no one has to yield to any other or to the coordinating board. As a result, coordination in any substantive form takes place in the appropriations process, and primarily by the legislature. This has increased the legislature's tendency to condition appropriations, a traditional practice much more earnestly engaged in since the adoption of the 1963 constitution.

Responses to the question about extending CS to additional institutions expressed general attitudes towards CS as well as more abstract speculations. State officials in all states with CS universities asserted that if the original decision were to be made today, constitutional status would not be conferred. Some went so far as to suggest that in ten to 20 years constitutional amendments would eliminate CS altogether. One knowledgeable observer said that a vote on an amendment to eliminate the CS of the university in his state would pass hands down.[30] The public, asserted these officials in CS universities, does not today and will not in the future support the principle that

[30]At least a part of the constitutional provisions for the University of Colorado were taken away early in 1973.

universities should have the qualitative autonomy traditionally bestowed by CS. One longtime senator stated, however, that in his state the constitutionally autonomous university has enough friends in the legislature to prevent a proposed constitutional change from ever obtaining the necessary two-thirds vote.

In contrast to state officials, university officials were certain that the public, if given an opportunity to express an opinion, would support CS. Indeed, one president of a CS university reported plans to take a constitutional amendment to the people that would expand the scope of the constitutional provision for his institution, confident that the public would support the extension of CS to other institutions. Some university officials elsewhere indicated that CS could be extended to other institutions, but overall, university officials doubted that the CS universities would support such an extension.[31] On the other hand, virtually all college and university officers agreed that attempts to remove CS from the university would meet strong opposition, even from institutions that lack it themselves, for several reasons: There is an advantage to all if one has CS (the model idea); having one CS institution strengthens the argument for extending the status to others; and most institutions have nothing to lose by supporting it.

Effects of Uniform Techniques and Processes

The leveling of institutions to some common denominator is not exclusively a function, of course, of whether or not they all possess CS. Modern budget techniques, if applied without consideration for subtle, or even fundamental differences between institutions, can be implemented irrespective of the legal status of institutions. Comprehensive management information systems on which to base decisionmaking are available to state budget officials, and these founts of data also tend to put institutions in a common position. As one former university vice president observed, "There's a history of exquisite and energetic information gathering by state government." Although universities, particularly those with CS, prefer to provide as

[31] President Charles Hitch (1973) of the University of California, in testimony on the draft of a master plan proposed by the California Joint Legislative Committee on the Master Plan, indicated his support of a recommendation providing constitutional status for the state college and university system.

little information as possible, they can only compete effectively for funds by providing the facts that would make it possible for them to be evaluated by criteria similar to those applied to other institutions.

Leveling can also result from state officers' increased understanding of university operations. In one state, after budget officials had used new management control techniques on the state colleges, they knew "where the bodies were buried" when they turned their attention to the CS university. Their expertise was sharpened by the fact that the state college system's growth and increasing complexity evolved at the same time as the development of the new budget techniques, so that the effects of the new budgetary methods had been closely studied for a number of years. The university had long been regarded as an untouchable monolith, while the colleges had been viewed individually—a situation which is changing as budget officials become more familiar with the university.

Effects of Mass Higher Education and New Institutions

A possible leveling development for major universities with and without CS, so far as their uniqueness and exclusive claims for autonomy are concerned, may arise from the increase in numbers and size of community colleges, state colleges, and other universities in the same state. Although the major university may still be the largest, the only PhD-granting institution, and the only one conducting much research, it no longer can really dominate higher education in the state. The many other institutions contribute to the perception of higher education as a system and, as experience indicates, this tends to evoke uniform treatment from the state. The growth of state government and the proliferation of state agencies accelerate the trend. In addition, state constitutional amendments with no direct relationship either to the university or higher education, nevertheless consolidate powers in the governor's or other state offices, and change budgeting and appropriation practices that result in the dilution of control prerogatives of the regents of CS universities.

State Reorganization of Higher Education

State reorganization of higher education is not an easy task. A lieutenant governor, speaking of his state's attempts to reorganize all

of state government referred to education as "a can of worms." Higher education (and education generally) never seems to fit easily into the mold of an executive cabinet. Implicit is the inescapable fact that a higher educational institution is not "just another state agency."

However, one way state government can rationalize higher education in a state is by consolidating all state institutions under a single governing board. (Consolidation is far less likely, of course, if one of the institutions possesses CS and the remainder are statutory.) Wisconsin is a case in point. In 1971, on an initiative by the governor, the Wisconsin legislature merged the University of Wisconsin with the Wisconsin State Universities, an act accomplished over the objection of the University of Wisconsin, but with the strong support of the faculty union at the state universities who saw merger as upgrading status and salaries. Merger could not have been accomplished by statute if the University of Wisconsin had had CS. The governor's task of merging the systems was made easier by a long-established pattern of giving increasingly similar treatment to the major university and the state universities—all SS institutions—with respect to budgeting, personnel, student disciplinary procedures, and the like. Another contributing factor to the merger was that the University of Wisconsin at Madison was unable to maintain a unique status when it established branch campuses which were designed both to be different from one another and more highly competitive with the regional state universities. Merger, thus, was seen as a means for resolving these issues.

It seems clear that the forces that are strengthening state government in general and the new management control techniques that are being exercised by the governor in particular are increasingly destroying the traditional place of higher education as a distinctive area to be dealt with differently from other state services. Even the CS university is vulnerable to a myriad of official influences which were unknown to it a few years ago or were applied only to the weakest of state services.

The universities, in responding to these general trends toward state intervention, find themselves at a decided disadvantage at a particular moment in history when public esteem for the university and higher education is at one of its lowerst ebbs. The CS university, as in Michigan, may be able to fight off the forces that militate against its autonomy long enough to regain public confidence and regain its semi-independent status, but the SS university seems destined to become in fact "just another agency of state government."

5

THE OPERATIONAL MEANING OF CONSTITUTIONAL STATUS

The account of the historical background of constitutional status for universities (Chapter 1) strongly indicates that universities granted such status have always had a precarious life in the struggle with the state, with some universities tenaciously and successfully protecting their rights and others losing them by default and negligence. Certainly the executive and legislative branches, in exercising their own constitutional mandates, continuously test the functional boundaries of constitutional autonomy. With the recent development of new organizational forms, management techniques, and information systems, and the imposition of new state agencies and their staffs on institutions of higher education, the testing of autonomy and of constitutional status has reached new highs.

The evidence of the present research in eight states unquestionably shows that the university with CS is losing a good deal of its ability to exercise final judgment on the use not only of its state funds but also of those derived from other sources. It now undergoes intensive reviews of budgets and programs by several different state agencies, by special commissions, and by legislative committees, all of which look for ways to control.[32] But despite the erosion of power of

[32]Waldo (1960) has commented, "The university is already an instrument of government and will become more so [p. 111]."

universities with CS status, there nevertheless are still differences between the universities with SS and those with CS protection. This chapter pulls together some conclusions about the operating areas in which constitutional status really makes a difference.

GENERAL COMPARISONS

A wide variety of factors not focused on in this study tend to influence the degree of autonomy permitted an institution and to frustrate strict and accurate comparisons between constitutional and statutory institutions: the sophistication of the state government; the age and size of the institution, its general local and national reputation, the character of its student body, and its relative emphasis on graduate versus undergraduate education; the presence or absence of demonstrations and unrest on campus; the location—urban or rural—of the institution; the availability and amount of funds for the institution from sources other than state government (e.g., endowments, patents, federal government); and the visibility of the institution and political controversiality of its policies.

The fundamental difference between institutions with constitutional status and those without it is that the constitution generally removes the former from the direct and immediate control of the legislature and the executive, while the latter remain continuously subject to legislative and executive prerogatives. Nevertheless, the constitutional language itself may require re-interpretation from time to time in order to find the degree of autonomy left to the CS university. There are numerous possibilities for qualification and limitation. In Michigan, one provision in the constitution vests the power for institutional supervision in a board of regents, yet other provisions require the regents to render an annual accounting of expenditures to the legislature, direct the state auditor to conduct audits of the university's books, and charge the state board of education to coordinate the universities. The parameters of legislative and executive involvement in institutional affairs are thus set by the whole constitution, not just by the provisions that directly apply to the university. Constitutional autonomy is given in one paragraph and partly taken away in others. On the other hand, a statutory university, in the absence of controlling constitutional language, may at any time have the legislature amend its laws, remove requirements, add to them, or impose new ones.

Other constraints upon the flexibility permitted the two types of institutions also derive from constitutional interpretation. In Colorado, the constitution prescribes the location of the university. Attempts by the legislature or the university itself to relocate or create new campuses eventually run up against the constitutional directive which prohibits just such a move.[33] In another state, however, the constitution may be silent on the question of location, and a SS university in that state may simply open up a branch or center in another city, without legislation on the subject (but with funding from the legislature). Which institution, then, has the greater flexibility and autonomy with respect to location: the university with CS, or the SS university?

A constitution is less easily amended than a statute and provides greater stability over time, but it is also less flexible, and both stability and flexibility are usually thought to be beneficial to an institution. Insofar as an institution with CS is free to act or not, without direct legislative intervention, it is considered "autonomous." The SS institution is set apart from the institution with CS by the legislative ability to enact and the executive power to implement statutes regarding institutions without CS. An institution subject to periodic legislative direction and involvement can be equated with being subsumed by state government, and lacks autonomy. Less often realized is that autonomy can also be reduced by a state constitution which itself may set forth a series of requirements applying to all state agencies and institutions (e.g., with regard to auditing, budgeting, submission of information, location). Too, the constitution may provide for legislative establishment of the rules and regulations to be exercised in relation to the subject. A supposedly "constitutionally autonomous" institution may, in these areas, be as controlled as an institution whose status is "merely statutory."

Conversely, a legislature may place so much trust in the institutional governing board of a SS institution, or be so disinclined itself to govern the institution or become involved in its affairs, that an effective measure of actual autonomy is conferred on the institution without the necessity of constitutional protection. A university may also be declared a public corporation by the legislature, which in at least one state (Illinois) has been responsible for exempting the univer-

[33] In the amendments to the Colorado constitution in 1973, the university was authorized the campuses in other locations.

sity from certain state executive controls. Or a university may be declared by statute to be autonomous (Maryland), subject only to legislative enactments which specifically include the university within the legislative language.

What, then, does constitutional status mean? With such a variety of possibilities, it is not surprising there should be some ambiguity about the matter. In general, CS means that those matters clearly designated by the constitution to be within the exclusive control of the university governing board are beyond the reach of legislative or executive interference. It also means that those powers clearly within the prerogatives of the legislature (e.g., the power to appropriate) or the executive (e.g., governor's budget formulation and veto powers) are exercisable against the university with CS.

In preparation for certain conclusions to be drawn, a clear perception of the difference between institutional and state governmental prerogatives is critical. When a governor and legislature concurrently exercise their constitutional powers, university prerogatives may turn out to be clearer in writing than they are in practice. For example, a university with CS may establish its own admissions standards and not be required by the legislature to admit every high school graduate who applies, whereas a SS university may be so required. Ostensibly, then, the constitutional university enjoys a clear measure of freedom from legislative interference in this area. However, the legislature may remind the CS institution of its obligations to the taxpayers in the state, and may also attach a condition to an appropriations bill seeking to compel the institution to admit all in-state high school graduates who apply. This condition the institution can legally choose to ignore, a fact which the legislature realizes, of course, since it is aware that a simple statute cannot have legal effect and that a conditional appropriation has similar legal limitations. But to create goodwill or to lessen pressure on it, the CS university may loosen its requirements a bit and the legislature, in turn, may not then insert the condition. A head-on conflict is thus averted, to everyone's relief. On the other hand, should the CS university either ignore the condition in its appropriations bill, or challenge its constitutionality, it risks a direct clash with the legislature, possibly with subsequent acrimonious challenges and charges and counter-charges in court. If only to preserve good relations, compromise is seen as a better solution.

In the hypothetical situation discussed above, did the university retain its autonomy? It did to the extent that it was not under legal compulsion to change its admissions standards; it did not if one

considers it was forced to change its policy at the "suggestion" of the legislature.

Unlike the university with CS, however, the SS university can be compelled to comply with admissions standards statutorily imposed as a condition to its appropriation. Nevertheless, should it prefer to avoid a statute on the subject and to operate according to loosely-defined traditions, the SS university might also agree to admissions standards "suggested" by the legislature—a solution not unlike that arrived at by the CS university. The difference is that the university with CS is in a somewhat stronger bargaining position than the university with SS.

The findings of the present investigation indicate few occasions, however, when a tax-supported institution of higher education, whatever its legal status, can successfully resist concerted legislative pressures, particularly in matters requiring state funds. The differences between institutional types are matters of degree only, the constitutional university being able to fight somewhat longer before bowing to pressure, and perhaps in the process able to stave off transitory legislative demands. Compromise or indulgence about lesser matters as a short-run tactic in order to retain the freedom to act on more major ones may preserve independence. The danger lies in such acquiescing tactics becoming a long-term mode of operation so that subsequently a court may interpret past compliance as a legal abdication of institutional autonomy.

The illustration of admissions standards dealt with a rather simple subject. State-institutional relationships become much more complicated, however, on such issues as programs, degrees, colleges, branch campuses, and other large-scale academic issues which require coordination with other institutions. Today, it is reasonable to expect involvement of a coordinating board in the planning process, and the legislature in the appropriation process. Each uses co-opting and control techniques which collectively may leave the CS with little more final decision power than a SS university.

With the foregoing political caveats in mind, certain principles and conclusions that differentiate between institutions with CS and those with SS can be summarized.

1. Both types of universities are equally subject to general laws of the state concerning public health, welfare, morals, and safety. The legislature, when it enacts such laws, exercises the general police power of the state, usually justifiable in individual instances by the danger involved, its immediacy, the nature of the steps taken to deal

with it, and so on. The campus, regardless of the university's legal status, is not a state within a state, nor a sanctuary from general police powers.

2. Governing boards of CS institutions are normally vested by state constitutions with extensive and fairly exclusive authority over the internal affairs of the institution. This includes such matters as admissions standards, academic programs, majors and minors, degree offerings, salary schedules, hiring and firing, tenure policies, student and employee discipline, purchasing, ownership and sale of property, organization, litigation, and other routine activities of the institution. Neither the legislature nor the executive can substantially interfere with or remove from the governing body of such institutions their constitutionally vested powers of management or control. (All four of the CS universities in the study were absolutely free of state control in matters related to purchasing, personnel matters, internal transfers of money, and admissions standards.)

Governing boards of SS institutions may manage such matters only to the extent that the legislature delegates the power to them. Although these delegated powers can at any time be amended, expanded, modified, or diminished, and the study evidence reveals that the state does not always assert its prerogatives over these matters, only Illinois and Maryland universities were free of state civil service, and two of the four SS universities were subject to state purchasing controls. The University of Wisconsin had tenure rules prescribed by law.

3. Prior to actual appropriation, the governor in his budget may anticipate that the university will obtain certain funds from other than state sources and reduce the state share accordingly, the legislature then appropriating according to this budget recommendation. The CS university appears from the study not to be able to resist these reductions any better than the SS institutions. Of all the incursions on the autonomy of the universities, the greatest in the eyes of the authors is this limiting of the freedom on an institution to expend funds derived from non-state sources as it deems best. Not only have federal overheads been captured by the state, but the endowment income has been appropriated in Minnesota, the revolving fund in Michigan, and all federal funds in Colorado.

4. The number of line-items in the appropriations bill also constricts the institution, since each line provides a reference point for comparison when the institution returns for another appropriation. CS

universities were somewhat more free of numerous line-items than SS ones, but in Colorado, Michigan, and Minnesota, riders, conditins, bills of particulars, and declarations of legislative intent seemed to place as much constriction on spending according to line-items as there was in three of the four SS institutions. Whether this conclusion is valid or not depends on the degree to which the CS universities ignore the legislative "lines" or acquiesce to them only "in principle" over several appropriations periods. Legally, of course, the legislature may attach conditions to appropriations of the CS university no further than it can enact ordinary legislation on the same subject. If it cannot compel by statute, it cannot compel by appropriation. Yet several of the CS institutions expressed intentions of complying in part, or presenting at least a semblance of complying with these informal mandates.

On the other hand, apart from reason and tradition, few legal provisions limit the conditions which may be attached to appropriations for SS universities; they are protected only to the extent that constitutional limits exist on the exercise of legislative power.

5. Before state funds are allotted to CS institutions for their own use, legislative and executive officials may use the monies in any lawful manner. They may decide, for example, to deposit them in the state treasury, where interest accrues to the state, or use them towards pre-planning costs for construction projects at all the institutions in the state, including those with SS.

When do authorized funds become the property of the institution with CS so that control, use, and disposition of them is within the exclusive discretion of the governing board? In this respect the CS universities in the eight states were worse off than those with SS. Minnesota and California allocate state funds to the institutions month by month, and Michigan makes allotments every two months. On the other hand, three of the SS universities get quarterly allotments, and the other an annual lump sum. The allotment process is a means whereby the state controls expenditures and cash flow of both SS and CS universities, and the allotment period may be short or long depending less on the legal status of the university than on general state practice.

With few exceptions and regardless of the allotment period, state funds of SS institutions never cease being the property of the state. This means that state statutes may authorize controls relating to the management and administration of state funds–emanating from, for example, the offices of the state auditor, treasurer, budget

director, controller, purchasing department, and so on–which are applicable to the SS institutions. Exceptions to certain state executive controls may be made in certain areas for institutions which are public corporations (e.g., purchasing at the University of Illinois), depending on the corporation laws.

Of all the eight universities, only Colorado recieved a lump sum to bank or expend as it wished; all other states kept funds appropriated for the university in the state treasury until it was allotted.

6. Constitutions may be amended, and many have been since the establishment of some CS institutions. Amendments have tended to confer greater powers in the expenditure of state revenues on state executives, their agencies, and legislatures. As constitutional amendments have strengthened executive and legislative powers, the relative powers of CS institutions have been correspondingly reduced. Amendments have, for example, provided for: audit of the university's books, coordination of the university with other higher institutions in the state, control of university lands, cooperation by the university with the governor in the budgeting process, submission of information and/or an accounting by the university to the legislature, line-item or partial veto power for the governor.

7. In the absence of constitutional provisions to the contrary (certain exceptions have been cited), the following general legal pattern applies with respect to matters relating to the management and administration of state institutions of higher education:

Universities with CS:

- may hire their own attorney
- may establish their own civil service (merit) system
- have exclusive control over academic affairs (degrees, programs, offerings, majors and minors, etc.)
- may do their own purchasing
- have charge of all building construction
- control their own funds (e.g., with regard to banking, internal allocations, transfers, reallocations)
- establish their own rules with respect to admission and retention of students and hiring, firing, and tenure of faculty
- have the power to decide what information to disclose to state executive and legislative officials in connection with budgeting, accounting, planning, and auditing
- are not covered by general state legislation
- are subject to proper exercise of state police power legislation

Universities with SS must comply with all requirements established by the constitution *and* with legislation which implements the constitutional provisions. This means that institutions with SS may or may not have control of the same matters as CS institutions. Normally the SS institutions:

- are represented by the office of the attorney general through one of his assistants
- comply with statutory requirements concerning civil service personnel
- confer degrees as authorized by the legislature, and depend upon legislative and coordinating board procedures (approval, review, recommendation, etc.) on program offerings, majors and minors, schools and colleges
- utilize the state purchasing department, and comply with its requirements
- follow state construction agency procedures and requirements regarding capital construction
- are subject to state statutes relating to admission and discipline of students and hiring, firing, and tenure of faculty
- comply with statutory and executive requirements regarding budgeting, accounting, planning, and auditing
- are covered by general state legislation
- are subject to the proper exercise of state police power legislation

Note should be made that the differences between the two types of institutions relate primarily to post appropriatons control and not to budget submission or review or other pre-appropriations processes.

8. Inducement, coercion, cooperation, and encouragement go on constantly between state government and both CS and SS institutions. These activities and pressures revolve around institutional functions or issues which are neither clearly institutional nor state prerogatives. In this no-man's-land, hard bargaining takes place between the institution and the state; and when it comes to bargaining, the CS university is usually in a better position than an institution whose status is merely statutory.

During the budget formulation and appropriations processes, the governor's and the legislature's bargaining position is much stronger than the CS universities'. The university has no special constitutional powers in relation to these fiscal activities, whereas they are the principal constitutional functions of the governor and legislature. And when two state political arms persist in exercising powers relating

to budget format, information to be furnished, formulas and budget preparation guidelines, and other pre-appropriations processes, the CS university is clearly not treated differently in practice, than the SS university.

9. With respect to fundamental questions of academic freedom, free speech, freedom of association and the press, and other First and Fourteenth Amendment issues, both types of institutions are equal under the U.S. Constitution.

THE PLACE OF TRUST

Numerous legal bases exist for securing distance between state government and higher education. Constitutional status is perhaps the most effective expedient, but possession of a charter as a public corporation (University of Illinois) or endowment by legislature itself with statutory autonomy (University of Maryland) are also useful in gaining autonomy from certain state functions or activities.

In the long run, however, institutional autonomy rests primarily on the amount of trust that exists between state government and institutions of higher education. That trust colors relationships between the two sectors so much that talk of the marginal effects of legal status pale into something close to insignificance by comparison. One official in a CS university stated, "We're not going to get anywhere unless we can open up with each other. The old style of being guarded and suspicious has got to end." This study concludes that he is right. There are too many ways that state government can assert controls over institutions of higher education, whatever their legal status, to permit confidence in an institution's ability to operate with complete or even marginal autonomy. The power of the university to protect itself, and the academic values it is assumed to have, from political and bureaucratic interference rests primarily on public trust and confidence.

There is one more conclusion to add, perhaps somewhat cautionary. If the university performs its knowledge-seeking and dissemination and critical functions at all well, it is bound to suffer various degrees of adverse reactions from the public and the politicians. It is thus ultimately advantageous to society for the university to have in its armamentarium a constitutional tool or two to defend itself against those immediate incursions into its autonomy that sometimes are precipitated by temporary conditions. Much of the value of

constitutional status may lie, therefore, in the role it plays in giving the university time to re-establish public confidence in its substantive value to the state.

APPENDIX A, SELECTED CASES

Set forth below are selected leading cases from states discussed in the text. Also noted are some attorney generals' opinions which have occasionally been of importance in determining the legal status of institutions in the various states. Not all citations, of course, relate to institutions with constitutional status, nor is the listing here exclusive. The more technically-oriented reader will wish to refer to the original case or opinion cited, and for this reason the material is largely unannotated.

ALABAMA

Cox v. Board of Trustees of University of Alabama (1909) 161 Ala. 639, 49 So. 814 (public lands)

Rep. Atty. Gen. Biennial Report for 1919-1920, p. 445 (powers of board of trustees of Alabama Polytechnic Institute, now Auburn University)

Stevens v Thames (1920) 204 Ala. 487, 86 So. 77 (more of medical department)

Denson v. Alabama Polytechnic Institute (1930) 220 Ala. 433, 126 So. 133 (eminent domain)

Gerson v. Howard (1945) 246 Ala. 567, 21 So (2d) 693 (eminent domain)

Rep. Atty. Gen. Quarterly Report, Jan.-March 1969, Vol. 134, pp. 34-36 (travel expenses of university employees)

Rep. Atty. Gen. Quarterly Report, Jan.-March 1971, pp. 13-18 (audit of university books and limits on expenditures)

ARIZONA

Fairfield v. W. J. Corbett Hardware Co. (1923) 25 Ariz. 199, 215 p. 510 (power to approve payment of claim–regents and state auditor)

Board of Regents of University of Arizona v. Sullivan (1935) 45 Ariz. 245, 42 P. 2d 619 (statute authorizing university to borrow and levy fees for repayment)

State of Arizona v. Miser (1937) 50 Ariz. 244, 72 P. 2d 408 (application to state minimum wage law to university)

Frohmiller v. Board of Regents of Univ. and State Colleges (1946) 171 P. 2d 356 (control over payment of claims against university)

Board of Regents v. Frohmiller (1949) 69 Ariz. 50, 208 P. 2d 833 (control over payment of claims against university)

Hernandez v. Frohmiller (1949) 68 Ariz. 242, 204 P. 2d 854 (application of state civil service act to university)

Board of Regents of the Universities and State College of Arizona v. City of Tempe (1960) 88 Ariz. 299, 356 P. 2d 399 (municipal building codes–state planning and building agency)

CALIFORNIA

Foltz v. Hoge (1879), 54 C. 28 (admission of women to Hastings Law School)

People v. Board of Education of Oakland (1880) 55 Cal. 331 (university a public trust)

Regents of the University of California v. January (1885) 66 C. 507, 6 P. 376 (control of university funds)

People v. Kewen (1886) 69 C. 215, 10 P. 393 (legislative attempt to change form of government of Hastings Law School)

Lundy v. Delmas (1894) 104 C. 655, 38 P. 445 (tort liability of regents)

In re Royer's Estate (1899) 123 C. 614, 56 P. 461 (charitable bequest)

City St. Improvement Co. v. Regents of University of California (1908) 153 C. 776, 96 P. 801 (exemption of university property from street assessment)

Williams v. Wheeler (1913) 23 C.A. 619, 138 P. 937 (vaccination and admissions–police power)

Bryan v. University of California (1922) 188 Cal. 559, 205 Pac. 1071 (in-state tuition)

Davis v. Board of Regents, University of California (1924) 66 C.A. 695, 227 P. 243 (power to create infirmary)

Wallace v. Regents of University of California (1926) 75 C.A. 274, 242 P. 892 (vaccination–police power)

In re Purington's Estate (1926) 199 C. 661, 250 P. 657 (charitable bequest)

Hamilton v. Regents of University of California (1934) 219 C. 663, 28 P. 2d 355 (military training courses)

Wall v. Board of Regents of University of California (1940) 38 C.A. 2d 698, 102 P. 2d 533 (regents power to hire Bertrand Russell and court intervention)

Fraser v. Regents of University of California (1952), 39 Cal. 2d 717, 249 Pac. 2d 283 (loyalty oath)

Tooman v. Underhill (1952) 39 C.A. 720, 249 P. 2d 280 (loyalty oath)

Newmarker v. Regents of University of California (1958) 160 C.A. 2d 640, 325 P. 2d 558 (employee right to strike–sick leave)

Goldberg v. Regents of University of California (1967) 248 C.A. 2d 867, 57 Cal Rptr. 463 (power to adopt student conduct rules)

Calif. St. Employees Association v. Regents of Univ. of California (1968) 267 C.A. 2d 667, 73 Cal. Rptr. 449 (applicability of state statute, regarding dues checkoff for state employees, to university)

Ishimatsu v. Regents of University of California (1968) 266 C.A. 2d 854, 72 Cal. Rptr. 756 (dismissal of employee review of administrative determination)

Searle v. Regents of the University of Calif. (1972) 100 Cal. Rptr. 194, 23 C.A. 3rd 448 (regents' censure of faculty members and disapproval of course)

COLORADO

In re Senate Resolution Relating to State Institutions (1886) 9 C. 626, 21 P. 472 (change in location of university)

People ex re Jerome v. Regents of University of Colorado (1897) 24 C. 175, 49 P. 286 (move of medical school from Boulder to Denver)

In re Macky's Estate (1909) 46 C. 79, 102 P. 1075 (inheritance tax liability)

Burnside v. Regents of University of Colorado (1937) 100 C. 33, 64 P. 2d 1271 (operation of bus line during summer school program–utilities commission powers)

Sigma Chi Fraternity v. Regents of University of Colorado, 258 F. Supp. 515 (D. Colo., 1966) (university ban of fraternity which discriminates)

Op. Atty. Gen. (December 21, 1966) to President J. R. Smiley, University of Colorado (operation of Denver Center by university) (No. 66-4032)

Memorandum of Authorities in Support of the Right of the Regents of the University of Colorado to Maintain Branches or Centers of the University at Locations Other than Boulder, by John P. Holloway, Resident Counsel, University of Colorado (September 30, 1966)

Memorandum No. 2 to Committee on Organization of State Government from Legislative Council Staff regarding Higher Education (July 5, 1968) (general discussion of legal status of University of Colorado)

Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968) (power to adopt student conduct rules)

Op. Atty. Gen. (March 17, 1971) to Frank Abbott, Executive Director, Colorado Commission on Higher Education (power of legislature and/or university to create branch campuses of university) (no. 71-4561)

City of Boulder v. Regents of the University of Colorado (1972) 501 P. 2d. 123 (city admissions tax on university events)

GEORGIA

Davison-Nicholson C. v. Pound (1917) 147 Ga. 447, 94 S.E. 560 (power of trustees of university to establish rules for a branch campus)

State of Georgia v. Regents of the University System of Georgia (1934) 179 Ga. 210, 175 S.E. 567 (regents' power to borrow)

Ramsey v. Hamilton (1935) 181 Ga. 365, 182 S.E. 392 (capacity of regents to be sued–state sovereign immunity)

Villyard v. Regents of University System (1948) 204 Ga. 517, 50 S.E. 2d 313 (regents' power to operate laundry and dry cleaning service)

IDAHO

Roach v. Gooding (1896), 11 Ida. 244, 81 Pac. 642 (income from university lands)

Phoenix Lumber Co. v. Regents of the University of Idaho (1908) 197 Fed. 425 (capacity of university to be sued)

Pike v. State Board of Land Commissioners (1911) 19 Ida. 268, 113 P. 447 (control of lands held for school purposes)

Moscow Hardware v. Regents of University of Idaho (1911) 19 Ida. 520, 113 P. 731 (construction of university building–liability for payment)

First Nat. Bank of Moscow v. Regents of University of Idaho (1911) 19 Ida. 440, 113 P. 735 (construction of university building–liability for payment)

Hyslop v. Board of Regents of University of Idaho (1911) 23 Ida. 341, 129 P. 1073 (power to fire president)

Shinn v. Board of Regents of University of Idaho (1911) 23 Ida. 341, 129 P. 1074 (power to fire president)

Interstate Construction Co. v. Regents of University of Idaho (D. Zda. 1912) 199 Fed. 509 (regents' capacity to be sued)

Melgard v. Eagleson (1919) 31 Ida. 411, 172 P. 655 (control over Morrill Act university funds –state auditor, treasurer)

Evans v. Van Deusen (1919) 31 Ida. 614, 174 P. 122 (transfer of university funds to other state accounts)

State ex vel Black v. State Board of Education (1921) 33 Ida. 415, 196 P. 201 (comprehensive litigation between university and variety of state officials acting pursuant to legislation relating to control of the university)

State ex vel Miller v. State Board of Education (1935) 56 Ida. 210, 52 P. 2d 141 (power to issue revenue bonds)

Dreps v. Board of Regents of University of Idaho (1943) 65 Ida. 88, 139 P. 2d 467 (state nepotism act-applicability to university)

ILLINOIS

People v. Barrett (1943) 382 Ill. 321, 46 N.E. 2d 951 (power of university to hire own attorney)

Board of Trustees of University of Illinois v. Industrial Commission of Illinois (1969) 44 Ill. 2d 207, 254 N.E. 2d 522 (university not part of state–workmen's compensation)

LOUISIANA

Student Government Assn. of L.S.U. v. Board of Supervisors (La. App. 1971) 251 So. 2d 428 (statute prescribing maximum parking fine for universities)

MARYLAND

Annotated Code of Maryland, Art. 77A Par. 15 (powers of board of regents–statutory autonomy)

Op. Atty. Gen. (May 14, 1956) (merit system employees at university–application of state rules and regulations)

MICHIGAN

People ex rel Drake v. Regents of the University of Michigan (1856) 4 Mich. 98 (legislative mandate to appoint professor of homeopathy)

Regents of University of Michigan v. Bd. of Education of City of Detroit (1856) 4 Mich. 212 (university lands)

People ex vel Regents of the University of Michigan v. Auditor General (1869) 17 Mich. 160 (conditioned appropriation–professor of homeopathy)

People v. Regents of the University (1869) 18 Mich. 468 (legislative mandate to appoint professor of homeopathy)

People ex vel Attorney General v. Regents of the University (1874) 30 Mich. 473 (legislative mandate to appoint professor of homeopathy)

Auditor General v. Regents of the University (1890) 83 Mich. 467, 47 N.W. 440 (property tax exemption)

Weinberg v. Regents of the University of Michigan (1893) 97 Mich. 246, 56 N.W. 605 (conditioned appropriation)

Sterling v. Regents of the University of Michigan (1896) 110 Mich. 369, 68 N.W. 253 (legislative mandate to establish homeopathic college)

Bauer v. State Board of Agriculture (1911) 164 Mich. 415, 129 N.W. 713 (management of Michigan State University–lease of university property)

Board of Regents of University of Michigan v. Auditor General (1911) 167 Mich. 444, 132 N.W. 1037 (management of University–traveling expenses of president)

State Board of Agriculaure v. Fuller (1914) 180 Mich. 349, 147 N.W. 529 (conditioned appropriation)

People for the Use of Regents of University of Michigan v. Brooks (1923) 224 Mich. 45, 194 N.W. 602 (eminent domain)

State Board of Agriculture v. State Administrative Board (1924) 226 Mich. 417, 197 N.W. 160 (conditioned appropriation)

Robinson v. Washtenaw Circuit Judge (1924) 228 Mich. 225, 199 N.W. 618 (tort liability of regents)

Attorney General ex rel. Cook v. Burhaus (1942) 304 Mich. 108, 7 N.W. 2d 370 (election of state senator as regent–state officers)

Peters v. Michigan State College (1948) 320 Mich. 243, 30 N.W. 2d 854 (workmen's compensation)

Lucking v. People (1948) 320 Mich. 495, 31 N.W. 2d 707 (liability for municipal taxes–payment for fire and police protection)

Glass v. Dudley Paper Company (1961) 365 Mich. 227, 112 N.W. 2d 489 (tort liability of state board of agriculture)

Regents of the University of Michigan v. Labor Mediation Board (1969) 18 Mich. App. 485, 171 N.W. 2d 477 (application of collective bargaining statute to university–public employees)

Regents of the University of Michigan v. Employment Relations Commission (1973) 389 Mich. 96, 204 N.W. 2d 218 (interns, residents, and postdoctoral fellows–public employees–Public Employees Relations Act)

Regents of the University of Michigan v. State of Michigan and Michigan State Board of Education (1973) Mich. Ct. of Appeals (May 16, 1973) No. 13422 (conditioned appropriations)

Spril v. Regents of the University of Michigan (1972)_____ Mich._____, 204 N.W. 2d 62 (married students rent increase–payment in lieu of taxes by university)

Op. Atty. Gen. (February 24, 1932, p. 475) (application of veterans preference act to university)

Op. Atty. Gen. (Nobember 24, 1937, p. 129) (application of state civil services act to universities)

Op. Atty. Gen. (December 14, 1939, p. 355) (liability for payment of intangible tax)

Op. Atty. Gen. (March 20, 1942, p. 555) (liability for payment of intangible tax)

Op. Atty. Gen. (April 28, 1943, p. 364) (application of statute prohibiting use of oleomargarine at state institutions)

Op. Atty. Gen. No. 2037 (March 31, 1955) (legislative power to change name of university)

Op. Atty. Gen. No. 2227 (December 9, 1955) (relative powers of governing body and legislature with respect to Michigan State University)

Op. Atty. Gen. No. 3369 (December 30, 1958) (power to issue bonds pledging student fees)

Op. Atty. Gen. No. 2127 (May 11, 1955) (conditioned appropriation)

Op. Atty. Gen. No. 4335 (January 12, 1965) (legislative power to establish law enforcement academy at university)

Op. Atty. Gen. No. 4420 (April 15, 1965) (conditioned appropriation)

Op. Atty. Gen. No. 4597 (August 18, 1967) (tuition plan–legislative powers)

MINNESOTA

Regents of the University of Minnesota v. Hart (1862) 7 Minn. R. (Gil.) 45 (construction of building–university responsibility)

Gleason v. University of Minnesota (1908) 104 Minn. 359, 116 N.W. 650 (reinstatement of student)

Knapp v. State (1914) 125 Minn. 194, 145 N.W. 967 (eminent domain)

State ex rel University of Minnesota v. Chase (1928) 175 Minn. 259, 220 N.W. 951 (state government reorganization–control over university expenditures)

Fanning v. University of Minnesota (1931) 183 Minn. 222, 236 N.W. 217 (conditioned appropriation)

State ex rel Peterson v. Quinlivan (1936) 198 Minn. 65, 268 N.W. 858 (manner of selection of regents)

State ex rel Sholes v. University of Minnesota (1952) 236 Minn. 452, 54 N.W. 3d 122 (adoption of rules prohibiting religious instruction)

Bailey v. University of Minnesota (1971) 290 Minn. 359, 187 N.W. 2d 702 (court power to enter declaratory judgment regarding management of university)

Op. Atty. Gen. 270-D (July 8, 1947) (conciliation of employee dispute–application of state statute to regents)

Op. Atty. Gen. 618-B (March 21, 1955) (control of university funds)

Op. Atty. Gen. 618-a-2 (August 28, 1947) (powers of state executive)

Op. Atty. Gen. No. 769, p. 1099 (1934) (applicability of building regulations)

Op. Atty. Gen. 359-A-11 (Nov. 4, 1929) (legislative control over university property)

Op. Atty. Gen. 616-A-2 (Nov. 13, 1936) (legislative power regarding tuitions)

Op. Atty. Gen. 618-a-5 (August 11, 1938) (purchasing procedure–control by state)

MISSOURI

State ex rel Heimberger v. Board of Curators (1916) 268 Mo. 598, 188 S.W. 128 (legislative mandate to establish engineering program)

State ex vel Curators v. McReynolds (1946) 354 Mo. 1199, 193 S.W. 2d 611 (power to issue revenue bonds)

State ex rel Curators v. Neill (1966) 397 S.W. 2d 666 (revenue bonds for parking facility)

Todd v. Curators of University of Missouri (1941) 347 Mo. 460, 147 S.W. 2d 1063 (tort liability of curators)

Op. Atty. Gen. No. 285, Kirkpatrick (Sept. 14, 1965) (application of state records act to university)

Op. Atty. Gen. No. 46, Joslin (December 19, 1955) (investment of nonappropriated funds)

NEVADA

King v. Board of Regents of the University of Nevada (1948) 65 Nev. 533; 200 P. 2d 221 (legislative establishment of advisory board of regents)

State ex rel Richardson v. Board of Regents of University of Nevada (1953) 70 Nev. 144, 261 P. 2d 515 (removal of faculty member–judicial review of application of tenure rules)

Atty. Gen. Op. No. 338 (December 19, 1957) (audit of university books)

Atty. Gen. Op. No. 428 (November 20, 1958) (purchase of real property–state auditor)

Atty. Gen. Op. No. 124 (April 14, 1964) (interpretation of state constitution–convention debates–conditioned appropriation)

Atty. Gen. Op. No. 383 (May 20, 1958) (federal research funds—compliance with state statute)

Atty. Gen. Op. No. 35 (April 6, 1959) (statute authorizing investment of university funds)

OKLAHOMA

Rheam v. Regents of University of Oklahoma (1933) 161 Okl. 268, 18 P. 2d 535 (students fees to redeem bonds for construction of student union)

Bd. of Regents of University of Oklahoma v. Childers (1946) 197 Okl. 350, 170 P. 2d 1018 (legislative line-item appropriation for hospital—regents powers to decide on allocation)

Op. Atty. Gen. No. 68-164 (June 13, 1968) (lump sum appropriation—transfer of funds)

Op. Atty. Gen. No. 68-247 (July 3, 1968) (public meeting statute applies to regents)

Op. Atty. Gen. No. 69-214 (July 31, 1969) (control of student activity fees)

Trapp v. Cook Construction Co. (1909) 24 Okl. 850, 105 P. 667 (legislative divestiture and augmentation of regents' powers and duties)

UTAH

Spence v. Utah State Agricultural College (1950) 119 Utah 104, 225 P. 2d 18 (power to issue revenue bonds—limits on state indebtedness)

University of Utah v. Candland (1909) 36 Utah 406, 104 P. 285 (legislative power over university funds—dormitory construction—state indebtedness)

University of Utah v. Board of Examiners (1956) 4 Utah 2d 408, 295 P. 2d 348 (declaratory judgment establishing legal status of university with respect to state board of examiners)

State Board of Education v. State Board of Higher Education (1973) 29 Utah 2d 110, 505 P. 2d 1193 (validity of legislative act creating board of higher education with power over institutions of higher education)

MISCELLANEOUS

Nostrand v. Little (1961) 58 Wash. 2d 111, 361 P. 2d 551 (loyalty oath)

Baggett v. Bullitt (1964) 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (Loyalty oath)

Dartmouth College v. Woodward (1819) 4 Wheat. (U.S.) 518

APPENDIX B, SELECTED PROVISIONS OF STATE CONSTITUTIONS

Set forth below are selected provisions in state constitutions from states which:

a) have one or more public universities possessed of constitutional status or some substantial measure of such status; and

b) have one or more public universities which at one time might have been adjudged to possess such status but, as a result of adverse court decisions, do not.

Not included or quoted here are provisions in state constitutions relating to executive and legislative powers which can be expected to affect the institutions.

ALABAMA CONSTITUTION

Article 14, Section 264:

> The state university shall be under the management and control of a board of trustees, (a) which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall

be elected and confirmed as hereinafter required. Successors to those trustees whose terms expire in nineteen hundred and two shall hold office until nineteen hundred and seven; successors to those trustees whose terms expire in nineteen hundred and four shall hold office until nineteen hundred and eleven; successors to those trustees whose terms expire in nineteen hundred and six shall hold office until nineteen hundred and fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who shall have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it reject the names of any memb rs, it shall thereupon elect trustees in the stead of those rejected. In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Article 14, Section 267:

The legislature shall not have power to change the location of the state university, or the Alabama Polytechnic Institute, or the Alabama Schools for the Deaf and Blind, or the Alabama Girls' Industrial School, as now established by law, except upon a vote of two-thirds of the legislature taken by yeas and nays and entered upon the journals.

Amendment 161, Section 1:

Auburn University, formerly called the Alabama Polytechnic Institute, shall be under the management and control of a board

of trustees. The board of trustees shall consist of two members from the congressional district in which the institution is located, one from each of the other congressional districts in the state as the same were constituted on the first day of January, 1961, the state superintendent of education and the governor who shall be ex officio president of the board. The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their successors shall be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially. Vacancies occurring in the office of trustees from death or resignation shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be appointed as herein required. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such. No employee of Auburn University shall be eligible to serve on its board of trustees.

ARIZONA CONSTITUTION

Article 11, Section 1:

The Legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system, which system shall include kindergarten schools, common schools, high schools, normal schools, industrial schools, and a university (which shall include an agricultural college, a school of mines, and such other technical schools as may be essential, until such time as it may be deemed advisable to establish separate State institutions of such character.) The Legislature shall also enact such laws as shall provide for the education and care of the deaf, dumb, and blind.

Article 11, Section 2:

The general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superin-

tendent of Public Instruction, county school superintendents, and such governing boards for the State institutions as may be provided by law.

Article 11, Section 3:

The State Board of Education shall be composed of the following members: the Superintendent of Public Instruction, the President of a State University or a State College, three lay members, a member of the State Junior College Board, a superintendent of a high school district, a classroom teacher and a county school superintendent. Each member, other than the Superintendent of Public Instruction, to be appointed by the Governor with the consent of the Senate. The powers, duties, compensation and expenses, and the terms of office of the Board shall be such as may be prescribed by law. As amended, election Nov. 3, 1964, eff. Dec. 3, 1964.

Article 11, Section 5:

The regents of the University, and the governing boards of other State educational institutions, shall be appointed by the Governor, except that the Governor shall be, ex-officio, a member of the board of regents of the University.

CALIFORNIA CONSTITUTION

Article 9, Section 9:

The University of California shall constitute a public trust, to be administered by the existing corporation known as "The Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. Said corporation shall be in form a board composed of eight ex officio members, to wit: the Governor, the Lieutenant Governor, the Speaker of the Assembly, the Superintendent of Public Instruc-

tion, the President of the State Board of Agriculture, the President of the Mechanics Institute of San Francisco, the President of the Alumni Association of the University and the Acting President of the University, and 16 appointive members appointed by the Governor; provided, however, that the present appointive members shall hold office until the expiration of their present terms. The term of the appointive members shall be 16 years; the terms of two appointive members to expire as heretofore on March 1st of every even-numbered calendar year, and in case of any vacancy the term of office of the appointee to fill such vacancy, who shall be appointed by the Governor, to be for the balance of the term as to which such vacancy exists. Said corporation shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise; provided, that all moneys derived from the sale of public lands donated to this acts amendatory thereof), shall be invested as provided by said acts of Congress and the income from said moneys shall be inviolably appropriated to the endowment, support and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics) to teach such branches of learning as are related to scientific and practical agriculture and mechanical arts, in accordance with the requirements and conditions of said acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex.

COLORADO CONSTITUTION

Article 8, Section 1:

> Educational, reformatory and penal institutions, and those for the benefit of insane, blind, deaf and mute, and such other institutions as the public good may require, shall be established and supported by the state, in such manner as may be prescribed by law.

Article 8, Section 5:

> The following educational institutions, to-wit: the University at Boulder, the Agricultural College at Fort Collins, the School of Mines at Golden, and the Institute for the Education of Mutes (which shall hereafter be known as Colorado School for Deaf and Blind), at Colorado Springs, are hereby declared to be institutions of the state of Colorado, and the management thereof subject to the control of the state, under the provisions of the constitution, and such laws and regulations as the general assembly may provide, and the location of said institutions, as well as all gifts, grants and appropriations of money and property, real and personal, heretofore made to said several institutions, are hereby confirmed to the use and benefit of the same respectively; provided, this section shall not apply to any institution, the property, real or personal, of which is now vested in the trustees thereof, until such property to be transferred by proper conveyance together with the control thereof, to the officers provided for the management of said institutions by this constitution or by law; and, provided further, that the regents of the University may whenever in their judgment the needs of the institution demand such action, establish, maintain and conduct all or any part of the departments of medicine, dentistry, and pharmacy of the University, at Denver; and provided, further, that nothing in this section shall be construed to prevent state educational institutions from giving temporary lecture courses, commonly called "University Extension Work" and "Farmers' Institute and Short Courses," in any part of the state, or conducting class excursions for the purpose of investigation and study.

Article 9, Section 12:

There shall be elected by the qualified electors of the state, at the first general election under this constitution, six regents of the university, who shall immediately after their election be so classified by lot, that two shall hold their office for the term of two years, two for four years and two for six years; and every two years after the first election there shall be elected two regents of the university, whose term of office shall be six years. The regents thus elected and their successors, shall constitute a body corporate to be known by the name and style of "The Regents of the University of Colorado."

Article 9, Section 13:

The regents of the university shall, at their first meeting, or as soon thereafter as practicable, elect a president of the university, who shall hold his office until removed by the board of regents for cause; he shall be ex officio, a member of the board, with the privilege of speaking, but not of voting, except in cases of a tie; he shall preside at the meetings of the board, and be the principal executive officer of the university, and a member of the faculty thereof.

Article 9, Section 14:

The board of regents shall have the general supervision of the university, and the exclusive control and direction of all funds of, and appropriations to, the university.

GEORGIA CONSTITUTION

Article VIII, Section 2-7102 Par. II:

There shall be a Board of Regents of the University System of Georgia, and the government, control, and management of the University System of Georgia and all of its institutions in said System, shall be vested in said Board of Regents of the University

System of Georgia. Said Board of Regents of the University System of Georgia shall consist of one member from each Congressional District in the State, and five additional members from the State-at-Large appointed by the Governor and confirmed by the Senate. The Governor shall not be a member of said Board. The first Board of Regents under this provision shall consist of those in office at the time this constitutional amendment is adopted, with the terms provided by law. Thereafter, all succeeding appointments shall be for seven-year terms from the expiration of the previous term. Vacancies upon said Board caused by expiration of term of office shall be similarly filled by appointment and confirmation. In case of a vacancy on said Board by death, resignation of a member, or from any other cause other than the expiration of such member's term of office the Board shall by secret ballot elect his successor, who shall hold office until the end of the next session of the General Assembly, or if the General Assembly be then in session, to the end of that session. During such session of the General Assembly the Governor shall appoint the successor member of the Board for the unexpired term and shall submit his name to the Senate for confirmation. All members of the Board of Regents shall hold office until their successors are appointed. The said Board of Regents of the University System of Georgia shall have the powers and duties as provided by law existing at the time of the adoption of this amendment, together with such further powers and duties as may be hereafter provided by law. (Acts 1943, p. 66, ratified Aug. 3, 1943.)

IDAHO CONSTITUTION

Article 9, Section 10:

The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten

dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.

LOUISIANA CONSTITUTION

Article 12, Section 7:

A. Board of supervisors of Louisiana state university.

Except as otherwise provided in this Section, the Louisiana State University and Agricultural and Mechanical College shall be under the direction, control, supervision and management of a body corporate to be known as the "Board of Supervisors of Louisiana State University and Agricultural and Mechanical College," which shall consist of the Governor, as ex-officio member, and fourteen members appointed by the Governor by and with the consent of the Senate. The appointive members of the Board on the effective date of this provision shall continue in office until the expiration of their respective terms. Thereafter, the terms of appointive members shall be fourteen years or until their successors have been appointed and qualified. The terms of two appointive members shall expire on June first of every even-numbered calendar year. The successors of all such members of the board shall be appointed for terms of fourteen years each. In case of any vacancy, the Governor shall fill such vacancy for the unexpired term, by and with the advice and consent of the Senate. More than one member of the board may be appointed from the same parish, and at least seven appointive members thereof shall have been students at and graduate of Louisiana State University and Agriculatural and Mechanical College. The Board shall elect, from its appointive members, a Chairman, a Vice-Chairman; and shall also elect a Secretary, who need not be a member of the board.

B. State board of education.

Except as otherwise provided in this Section, the State Board of Education shall have supervision of all other higher educational institutions, subject to such laws as the Legislature may enact. It shall appoint such governing bodies as may be provided. It shall submit to the Legislature, or other agency designated by the Legislature, a budget for said Board and for these institutions.

Teachers certificates; approval of private schools and colleges. It shall prescribe the qualifications, and provide for the certification of the teachers of elementary, secondary, trade, normal and collegiate schools; it shall have authority to approve private schools and colleges, whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State; and the certificates or degrees issued by such private schools or institutions so approved shall carry the same privileges as those issued by the State schools and institutions.

C. The Louisiana coordinating council for higher education; composition coordinating council for higher education;

1. The Legislature is authorized to create and establish a Louisiana Coordinating Council for Higher Education, which shall consist of fifteen members who shall be appointed in the manner and for the terms fixed by law.

(1) All vacancies in the memberhsip of the Council shall be filled in the manner provided by law.

(2) A majority of the members of the council shall constitute a quorum. The council shall select a chairman and vice-chairman from its own membership and such other officers as may be necessary to conduct its business or as may be provided by law.

(3) The duties, functions and authority of said council, subject to the provisions of this section and this constitution, shall be as provided by law.

(4) The Legislature shall at any time have the right to abolish the Louisiana Coordinating Council for Higher Education.

2. New Institutions. If the Legislature creates the Louisiana Coordinating Council for Higher Education and if a new public institution of higher education is proposed, said council shall make a thorough study and analysis of the need and feasibility for such new educational institution and shall report thereon within one year to the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the State Board of Education, to the Governor and the Legislature in writing and only after such report and analysis has been made and filed, or if no report is filed in one year, the Legislature may create or establish any new public educational institution and

then only after compliance with the provisions of Article IV, Section 14, of this constitution. Within the meaning of this section, the creation or establishment of new public educational institutions shall include, but not by way of limitation, the establishment of branches of existing educational institutions and the conversion of institutions offering two-year courses of study to institutions offering longer courses of study.

3. New degree programs. If the Legislature creates the Louisiana Coordinating Council for Higher Education, no new degree program not in effect at any higher public educational institution on the effective date of this section shall be established, adopted or inaugurated at any such institution without prior approval of the Louisiana Coordinating Council for Higher Education, except that any institution denied a new degree program by the Louisiana Coordinating Council for Higher Education shall have the right to secure approval from the Legislature.

4. Legislature. The Legislature shall appropriate the necessary funds for the operation and maintenance of the Louisiana Coordinating Council for Higher Education, if created, and, subject to the limitations provided in this constitution, may define and clarify the duties, functions and scope of authority of said council.

(Amended by Acts 1968, No. 668, adopted Nov. 5, 1968.)

Article 12, Section 8:

It [state board of education] shall not create or maintain any administrative department in which salaries or expenses are payable from State funds, unless authorized by the Legislature. The Legislature shall prescribe the terms under which funds offered for educational purposes shall be received and disbursed. (Bracketed material supplied.)

Article 12, Section 9:

Northwestern State College of Louisiana, heretofore known as the Louisiana State Normal College, the Louisiana Polytechnic Institute, heretofore known as the Louisiana Industrial Institute,

the Southwestern Louisiana Institute of Liberal and Technical Learning, heretofore known as the Southwestern Louisiana Industrial Institute, Southeastern Louisiana College, the State School for the Blind, the State School for the Deaf, the Southern University, the State School for Blind Negroes, the State School for Deaf Negroes, and such others as may hereafter be created by the Legislature, are declared to be the higher institutions of learning now embraced in the educational system subject to the direct supervision of the State Board of Education. For the support and maintenance of the institutions named above and existing at the date of this Constitution, there shall be appropriated annually by the Legislature a sum of not less than seven hundred thousand ($700,000.00) dollars, which shall be apportioned in the Act of appropriation to said institutions, as their needs may require, upon the recommendation of the State Board of Education. The Legislature shall make additional appropriations for the improvement, equipment, support, and maintenance of said institutions, as their needs may require. (As amended Acts 1938, No. 388, adopted Nov. 8, 1938; Acts 1944, No. 326, adopted Nov. 7, 1944.)

Article 12, Section 17:

There shall be appropriated exclusively to the maintenance and support of the Louisiana State University and Agricultural and Mechanical College all revenues derived and to be derived from the seminary fund, the agricultural and mechanical college fund and other funds or lands donated or to be donated by the United States to the State of Louisiana for the use of a seminary of learning, or of a college for the benefit of agricultural and mechanical arts. For its endowment and support there shall be levied annually, beginning on January 1, 1925, a tax of one-half of one mill on the dollar of the assessed valuation of all the taxable property in the State; but if the proceeds of this tax exceed One Million Dollars ($1,000,000.00) in any one year, the excess shall be transferred to the general fund; provided, that nothing in this section shall be construed as prohibiting the Legislature from making such additional appropriations as may be necessary.

After July 1, 1934, there shall be appropriated exclusively to the maintenance, support and improvement of the said Louisiana

State University and Agricultural and Mechanical College, all revenues hereafter derived from the State license taxes now imposed, or which may hereafter be imposed, on every person, firm, corporation, domestic or foreign, association of persons, or company, which may be authorized to contract on his, their, or its account, to issue any policies, or agreements for policies of life, fire, marine, surety, fidelity, indemnity, guaranty, employers' liability, liability, credit, health, accident, livestock, plate-glass, tornado, automobile, automatic sprinkler, burglary, steam boiler insurance, and all other forms of insurance; but if the proceeds of said excise-license taxes exceed One Million ($1,000,000.00) Dollars in any one year, that excess shall be transferred to the State's General Fund; provided that nothing herein shall be interpreted as prohibiting the Legislature from making such additional appropriations as may be necessary. (As amended Acts 1932, No. 116, adopted Nov. 8, 1932; Acts 1940, No. 380, adopted Nov. 5, 1940.)

Article 12, Section 25:

The metropolitan branch of Louisiana State University and Agricultural and Mechanical College established in New Orleans by Act 60 of the regular session of 1956 and known as Louisiana State University at New Orleans shall be and remain at all times an integral part of Louisiana State University and Agricultural and Mechanical College under the direction, control, supervision, and management of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College. (Added Acts 1958, No. 544, adopted Nov. 8, 1958, as amended Acts 1966, No. 561, adopted Nov. 8, 1966.)

Article 12, Section 26:

The New Orleans Branch of Southern University and Agricultural and Mechanical College established by Act 28 of the extraordinary session of 1956 shall be and remain at all times an integral part of Southern University and Agricultural and Mechanical College under the direct supervision, control and management of the Louisiana State Board of Education. (Added Acts 1960, No. 632, adopted Nov. 8, 1960.)

MICHIGAN CONSTITUTION

Article 8, Section 3:

State board of education; duties

Leadership and general supervision over all public education, including adult education and instructional programs in state institutions, except as to institutions of higher education granting baccalaureate degrees, is vested in a state board of education. It shall serve as the general planning and coordinating body for all public education, including higher education, and shall advise the legislature as to the financial requirements in connection therewith.

Superintendent of public instruction; appointment, powers, duties.

The state board of education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for the execution of its policies. He shall be the principal executive officer of a state department of education which shall have powers and duties provided by law.

State board of education; members, nomination, election, term.

The state board of education shall consist of eight members who shall be nominated by party conventions and elected at large for terms of eight years as prescribed by law. The governor shall fill any vacancy by appointment for the unexpired term. The governor shall be ex-officio a member of the state board of education without the right to vote.

Boards of institutions of higher education, limitation.

The power of the boards of institutions of higher education provided in this constitution to supervise their respective institutions and control and direct the expenditure of the institutions' funds shall not be limited by this section.

Article 8, Section 4:

The legislature shall appropriate moneys to maintain the University of Michigan, Michigan State University, Wayne State University, Eastern Michigan University, Michigan College of Science and Technology, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris Institute, Grand Valley State College, by whatever names such institutions may hereafter be known, and other institutions of higher education established by law. The legislature shall be given an annual accounting of all income and expenditures by each of these educational institutions. Formal sessions of governing boards of such institutions shall be open to the public.

Article 8, Section 5:

The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Article 8, Section 6:

Other institutions of higher education established by law having authority to grant baccalaureate degrees shall each be governed

by a board of control which shall be a body corporate. The board shall have general supervision of the institution and the control and direction of all expenditures from the institution's funds. It shall, and often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution and be ex-officio a member of the board without the right to vote. The board may elect one of its members or may designate the president to preside at board meetings. Each board of control shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year and who shall be appointed by the governor by and with the advice and consent of the senate. Vacancies shall be filled in like manner.

Article 8, Section 7:

The legislature shall provide by law for the establishment and financial support of public community and junior colleges which shall be supervised and controlled by locally elected boards. The legislature shall provide by law for a state board for public community and junior colleges which shall advise the state board of education concerning general supervision and planning for such colleges and requests for annual appropriations for their support. The board shall consist of eight members who shall hold office for terms of eight years, not more than two of which shall expire in the same year, and who shall be appointed by the state board of education. Vacancies shall be filled in like manner. The superintendent of public instruction shall be ex-officio a member of this board without the right to vote.

MINNESOTA CONSTITUTION

Article 8, Section 3:

The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated unto the said univer-

sity; and all lands which may be granted hereafter by Congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

MISSOURI CONSTITUTION (1945)

Article 9, Section 9(a):

The government of the state university shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate.

Article 9, Section 9(b):

The general assembly shall adequately maintain the state university and such other educational institutions as it may deem necessary.

Note: The operative language vesting the "government" of the University in a board of curators appears in the 1875 Constitution but has been interpreted in such a way as to deny the University Constitutional status. See *State ex rel. Heimberger v. Board of Curators of University of Missouri* (1916), 188 S.W. 128, 268 Mo. 598.

MONTANA CONSTITUTION

(As approved by voters June 6, 1972, effective July 1, 1973)

Article 10, Section 9

(1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana University system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

Article 10, Section 10:

The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

NEVADA CONSTITUTION

Article 11, Section 4:

> The Legislature shall provide for the establishment of a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining to be controlled by a Board of Regents whose duties shall be prescribed by Law.

Article 11, Section 5:

> The Legislature shall have power to establis [establish] Normal schools, and such different grades of schools, from the primary department to the University, as in their discretion they may deem necessary, and all Professors in said University, or Teachers in said Schools of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article Fifteenth of this Constitution. No Professor or Teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this Section, shall be entitled to receive any portion of the public monies set apart for school purposes.

Article 11, Section 6:

> In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

OKLAHOMA CONSTITUTION

Article 6, Section 31:

> A Board of Agriculture is hereby created to be composed of five members all of whom shall be farmers and shall be selected in the manner prescribed by law.

Said Board shall be maintained as a part of the State government, and shall have jurisdiction over all matters affecting animal industry and animal quarantine regulation, and shall be the Board of Regents of all State Agricultural and Mechanical Colleges, and shall discharge such other duties and receive such compensation as now is, or may hereafter be, provided by law.

Article 6, Section 31a:

There is hereby created a Board of Regents for the Oklahoma Agricultural and Mechanical College and all Agricultural and Mechanical Schools and Colleges maintained in whole or in part by the State. The Board shall consist of nine (9) members, eight (8) members to be appointed by the Governor by and with the advice and consent of the Senate, a majority of whom shall be farmers, and the ninth member shall be the President of the State Board of Agriculture. Any vacancy occuring among the appointed members shall be filled by appointment of the Governor by and with the advice and consent of the Senate. The members of the Board shall be removable only for cause as provided by law for the removal of officers not subject to impeachment. The members shall be appointed for terms of (8) years each, with one term expiring each year, provided that the members of the first Board shall be appointed for terms of from one (1) to eight (8) years respectively. Provided that no State, National or County officer shall ever be appointed as a member of said Board of Regents until two years after his tenure as such officer has ceased. Added State Question No. 310, Referendum Petition No. 87. Adopted special election July 11, 1944.

Article 13, Section 8:

The government of the University of Oklahoma shall be vested in a Board of Regents consisting of seven members to be appointed by the Governor by and with the advice and consent of the Senate. The term of said members shall be for seven years, except and provided that the appointed members of the Board of Regents in office at the time of the adoption of this amendment as now provided by law shall continue in office during the term for

which they were appointed, and thereafter as provided herein.

Appointments for filling vacancies occurring on said Board shall be made by the Governor with advice and consent of the Senate and said appointments to fill vacancies shall be for the residue of the term only.

Members of the Board of Regents of the University of Oklahoma shall be subject to removal from office only as provided by law for the removal of elective officers not liable to impeachment. Added State Question No. 311, Referendum Petition No. 88. Adopted special election July 11, 1944.

Article 13A, Section 1:

All institutions of higher education supported wholly or in part by direct legislative appropriations shall be integral parts of a unified system to be known as "The Oklahoma State System of Higher Education." Added State Question No. 300, Referendum Petition No. 82. Adopted Special Election March 11, 1941.

Article 13A, Section 2:

There is hereby established the Oklahoma State Regents for Higher Education, consisting of nine (9) members, whose qualifications may be prescribed by law. The Board shall consist of nine (9) members appointed by the Governor, confirmed by the Senate, and who shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Upon the taking effect of this Article, the Governor shall appoint the said Regents for terms of office as follows: one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, one for a term of six years, one for a term of seven years, one for a term of eight years, and one for a term of nine years. Any appointment to fill a vacancy shall be for the balance of the term only. Except as above designated, the term of office of said Regents shall be nine years or until their successors are appointed and qualified.

The Regents shall constitute a co-ordinating board of control for all State institutions described in Section 1 hereof, with the following specific powers: (1) it shall prescribe standards of higher education applicable to each institution; (2) it shall determine the functions and courses of study in each of the institutions to conform to the standards prescribed; (3) it shall grant degrees and other forms of academic recognition for completion of the prescribed courses in all of such institutions; (4) it shall recommend to the State Legislature the budget allocations to each institution, and; (5) it shall have the power to recommend to the Legislature proposed fees for all of such institutions, and any such fees shall be effective only within the limits prescribed by the Legislature. Added State Question No. 300, Referendum Petition No. 82. Adopted Special Election March 11, 1941.

Article 13A, Section 3:

The appropriations made by the Legislature for all such institutions shall be made in consolidated form without reference to any particular institution and the Board of Regents herein created shall allocate to each institution according to its needs and functions. Added State Question No. 300, Referendum Petition No. 82. Adopted Special Election March 11, 1941.

Article 13A, Section 4:

Private, denominational, and other institutions of higher learning may become co-ordinated with the State System of Higher Education under regulations set forth by the Oklahoma State Regents for Higher Education. Added State Question No. 300, Referendum Petition No. 82. Adopted Special Election March 11, 1941.

Article 13B, Section 1:

Section 1. There is hereby created a Board to be known as the Board of Regents of Oklahoma Colleges, and shall consist of nine (9) members to be appointed by the Governor, by and with the

consent of the Senate. The Governor shall appoint one (1) member to serve for one (1) year, one (1) member to serve for two (2) years, one (1) member to serve for three (3) years, one (1) member to serve for four (4) years, one (1) member to serve for five (5) years, one (1) member to serve for six (6) years, one (1) member to serve for seven (7) years, one (1) member to serve for eight (8) years, and one (1) member to serve for nine (9) years. Provided that one (1) member shall come from each Congressional District and the ninth (9th) member shall be the State Superintendent of Public Instruction. Their successors shall be appointed for a term of nine (9) years, and such appointments shall be made within ninety (90) days after the term expires. Vacancies shall be filled by the Governor within ninety (90) days after the vacancy occurs. Each member of the Board, except the State Superintendent shall receive as compensation the sum of Ten ($10.00) Dollars per day, not to exceed sixty (60) days in any fiscal year while he is actually engaged in the performance of duties, and he shall also be allowed the necessary travel expenses as approved by the Board and paid in the manner provided by law. The Board shall elect a president and vice-president who shall perform such duties as the Board directs. No executive board meetings shall be held at any time unless such executive session is ordered by a unanimous vote of the Board. The personnel of the Board of Regents of the Oklahoma Colleges shall not include more than two (2) members from any one profession, vocation, or occupation. No member of the Board shall be eligible to be an officer, supervisor, president, instructor, or employee of any of the colleges set forth herein within two (2) years from the date of expiration of his term. Any member who fails to attend a board meeting more than two (2) consecutive meetings without the consent of a majority of the Board, his office shall be declared vacant by the Governor and his successor shall be appointed as provided herein. Added State Question No. 328, Referendum Petition No. 93. Adopted special election July 6, 1948.

Article 13B, Section 2:

Section 2. The said Board of Regents of Oklahoma Colleges shall hereafter have the supervision, management and control of the

following State Colleges: Central State College at Edmond; East Central State College at Ada; Southwestern Institute of Technology at Weatherford; Southeastern State College at Durant; Northwestern State College at Alva; and the Northeastern State College at Tahlequah, and the power to make rules and regulations governing each of said institutions shall hereafter by exercised by and is hereby vested in the Board of Regents of Oklahoma Colleges created by this Act, and said Board shall appoint or hire all necessary officers, supervisors, instructors, and employees for such institutions. Added State Question No. 328, Referendum Petition No. 93. Adopted special election July 6, 1948.

Article 13B, Section 3:

Section 3. The Board of Regents of Oklahoma Colleges shall succeed the present governing board in the management and control of any of the institutions named in the preceding section, and such governing board shall not hereafter have the management or control of any of said institutions. All records, books, papers and information pertaining to the institutions herein designated shall be transferred to the Board of Regents of Oklahoma Colleges. Added State Question No. 328, Referendum Petition No. 93. Adopted special election July 6, 1948.

Article 13B, Section 4:

Section 4. The Oklahoma State Regents for Higher Education are hereby authorized to allocate from the funds allocated for the support of its educational institutions named in this Act, funds sufficient for the payment of the per diem and expenses of the members of the Board of Regents of Oklahoma Colleges, the salaries and expenses of the clerical help of said Board; office expense, and other expenses necessary for the proper performance of the duties of said Board. Added State Question No. 328, Referendum Petition No. 93. Adopted special election July 6, 1948.

UTAH CONSTITUTION

Article 10, Section 4:

> The location and establishment by existing laws of the University of Utah, and the Agricultural College are hereby confirmed, and all the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto said University and Agricultural College respectively.

Article 10, Section 2:

> The public schools system shall include kindergarten schools; common schools, consisting of primary and grammar grades; high schools, an agricultural college; a university; and such other schools as the Legislature may establish. The common schools shall be free. The other departments of the system shall be supported as provided by law. (As amended November 6, 1906, effective January 1, 1907; November 8, 1910, effective January 1, 1911.)

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